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HUMAN RIGHTS COMMITTEE

Fortieth session

SUMMARY RECORD OF THE 1018th MEETING

Held at the Palais des Nations, Geneva,
on Monday, 29 October 1990, at 10 a.m.

Chairman: Mr. LALLAH

later: Mr. SERRANO CALDERO

CONTENTS

Consideration of reports submitted by States parties under article 40 of the Covenant (continued)

Spain

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The meeting was called to order at 10.10 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (agenda item 4) (continued)

Third periodic report of Spain (CCPR/C/58/Add.1 and 3)

1. At the invitation of the Chairman, Mr. Artacho, Mr. Borrego Borrego and Mr. Los Arcos (Spain) took seats at the Committee table.

2. Mr. BORREGO BORREGO (Spain), introducing the third periodic report of Spain (CCPR/C/58/Add.1 and 3), reminded the Committee that his country had ratified the Covenant in 1977 and that its current Constitution, which had been adopted a year later, guaranteed the full exercise of human rights by all citizens. In the ensuing years, his Government had made intensive efforts to incorporate into domestic legislation the provisions necessary to ensure the effective enjoyment of the rights enshrined in the Covenant. Substantial progress had been made in that respect through reforms in the administration of justice, and the courts, especially the Constitutional Court, had handed down numerous decisions based on the provisions of the Covenant. In fulfilling its obligation under article 40 of the Covenant, his delegation appeared before the Committee in a spirit of total co-operation and willingness to answer any questions the Committee deemed necessary to ask in order to ensure the proper and thorough implementation of the Covenant.

List of issues to be taken up in connection with the consideration of the third periodic report of Spain (CCPR/C/58/Add.1 and 3)

I. Constitutional and legal framework within which the Covenant is implemented (article 2 (2) and (3))

"(a) Please clarify whether a provision of the Covenant can be directly invoked before the courts. Have any court decisions or rulings been directly based on a provision of the Covenant?

(b) Have the authorities of the Autonomous Communities, including the legislative authorities, been made aware of the provisions of the Covenant and have such provisions been reflected in their statutes?

(c) Are the civil and political rights enumerated in Title I, Section 1, of the Constitution automatically applicable within the Autonomous Communities or must they be separately enacted?"

3. Mr. BORREGO BORREGO (Spain), responding to question (a), said that not only had the Covenant been ratified by Spain and published in the Official Gazette, but its provisions had also been incorporated into Spanish domestic law by virtue of article 1 (5) of the Civil Code. The provisions of the Covenant could therefore be directly invoked before the Spanish courts. Article 10 (2) of the Constitution stated, moreover, that the provisions of the Constitution relating to fundamental rights should be interpreted in conformity with the Covenant. The latter's guarantees not only formed part of ordinary Spanish law, but had been elevated to the rank of constitutional law. Under article 53 (1) of the Constitution, the fundamental rights enshrined in the Covenant were binding on all public authorities and came within the purview of special guarantees, such as the remedy of amparo.

Abundant case law had been developed by both the ordinary courts and the Constitutional Court on the basis of the provisions contained in the Universal Declaration of Human Rights, the European Convention on Human Rights, the Covenant and other international human rights instruments ratified by Spain. The Covenant had been invoked in numerous Court decisions.

4. Regarding question (b), the provisions of the Covenant, having been published in the Official Gazette, were binding on all public authorities, both the central authorities and those of the Autonomous Communities, in conformity with articles 10 (2) and 53 (1) of the Constitution. The statutes of the Autonomous Communities recognized in their initial titles, the fundamental rights enshrined in the Covenant and expressly established the specific duties incumbent on the public authorities of those Communities to ensure respect for the Covenant's provisions (Statutes of the Basque Community, art. 9, paras. 1 and 2, and Statutes of Catalonia, art. 8, para. 1). Thus, the rights set forth in the Covenant were guaranteed in the Autonomous Communities in the same way as they were in the rest of Spain.

5. With respect to question (c), article 53 (1) of the Constitution provided that the fundamental rights and freedoms therein guaranteed should be directly applicable in the Autonomous Communities. Separate enactments were therefore not necessary.

6. Mr. PRADO VALLEJO, welcoming the opportunity for a constructive dialogue with the Spanish delegation, expressed his appreciation, particularly as a citizen of a Latin American country, for the rapid democratization achieved by Spain and for the efforts made by its Government to include fundamental human rights guarantees in the country's legislation, including numerous remedies in the event of violations of those rights. Moreover, the Spanish Constitution was one of the very few constitutions that established that human rights conventions should automatically form part of the country's binding legislation and that the Covenant should prevail in cases of doubt about a particular right.

7. In relation to what was stated in paragraphs 2 and 20 of the third periodic report (CCPR/C/58/Add.1), he wondered whether all the rights enshrined in the Covenant were provided for in the Spanish Constitution and relevant legislation, or only certain of those rights. Turning to paragraph 27 of the report, he asked why the grounds on which discrimination was prohibited under article 53 (2) of the Constitution, namely, birth, race, sex, religion, opinion or any other personal or social status or circumstance, differed from those mentioned in article 2 (1) of the Covenant, namely, race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. He would particularly like to know whether the constitutional provisions covered all the categories mentioned in the Covenant. Concerning paragraph 36 of the report, which also referred to the principle of non-discrimination, he asked whether the exception established with regard to the right of aliens to enjoy civil and political rights, namely, that they did not have the right to vote, stand for election or hold a public office involving the exercise of authority, was in conformity with the Covenant. In relation to article 4 of the Covenant, he inquired whether, under a state of emergency or siege, the right to amparo remained. Lastly, in connection with paragraph 43 of the report, he requested more specific information on what was meant by the individual suspension of certain rights, particularly since the Covenant mentioned only the general suspension of such rights.

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8. Mr. AGUILAR commended the Spanish delegation for its prompt submission of the report, which was a comprehensive and highly satisfactory supplement to its previous reports. The delegation's concise, direct and clear introduction to the report was a reflection of the democratic system that had been firmly established in Spain, a system which guaranteed the enjoyment of fundamental rights and freedoms by all citizens, including those of the Autonomous Communities, and stood as an example to all countries, particularly those in Latin America.

9. During the consideration of Spain's previous report, the Committee had been informed that article 96 (1) of the Constitution provided that, in the event of conflict, the Covenant should prevail over domestic law and be considered in that respect equivalent to the Constitution, and that such conflicts were generally resolved in favour of the Constitution, into which the Covenant had been incorporated. In connecction with paragraph 2 (a) of the report, he would like to know whether article 162 (1)(a) of the Constitution should be understood to mean that in a conflict between the Covenant and the law, the court would apply the Covenant over and above the law, and in that case, whether the law in question would be repealed or would continue to have some future application. He also wondered whether there could be a case in which a law that was in conflict with the Covenant might be given precedence in a court decision, despite the provisions of article 10 (2) of the Constitution.

10. In relation to paragraph 2 (c) of the report, he inquired whether the remedy of amparo against violations of rights and freedoms guaranteed by the Constitution might be used as a remedy in the event of violation of rights guaranteed under the Covenant. Moving on to paragraph 2 (f), he requested further information on how the Parliamentary Committees functioned in relation to human rights violations. In particular, what powers of decision did they have and what was the nature of the petitions they received?

11. Referring to the legislation mentioned in paragraph 10 of the report and the provisions explained in paragraph 2 (a) of the same document, he wondered how a specific right that was not contained in a law could be exercised. In that connection, he associated himself with Mr. Prado Vallejo's question whether all or only some of the rights established in the Covenant were guaranteed in Spanish legislation.

12. In relation to paragraph 18 of the report, he would welcome further information on the powers of the courts and parliaments of the Autonomous Communities and asked how the Constitutional Court had resolved conflicts between the courts of the Kingdom and those of the Autonomous Parliaments, particularly in relation to the 98 judgements referred to in paragraph 16.

13. Mr. SERRANO CALDERA said that because of the strong historical ties between Spain and the Latin American countries, which viewed Spanish events and developments with sympathy and understanding and followed them as if they were part of their own lives, he took a very keen interest in the third periodic report of Spain. The report had been very well prepared, was consistent and cogent in its presentation and content, and conformed to the Committee's recommendations. The delegation's replies, too, had been clear and unambiguous.

14. He associated himself with the questions asked by the two previous speakers. In addition, since the provisions of the Covenant had been incorporated into the Spanish Constitution and therefore also formed part of the Spanish legal system, he inquired where the Covenant ranked in the hierarchy of Spanish legislation. Was it at the level of a constitutional norm or at a lower level? He also wondered whether it was possible for a law subsequent to the Covenant, but which ran counter to its provisions and established a different régime, to be declared unconstitutional by one of the authorities referred to in the Constitution. He also sought clarification on the competence of the Parliamentary Committee. What were its functions and how did it differ from other bodies dealing with constitutional matters?

15. Mr. FODOR expressed appreciation for the prompt submission and high quality of the Spanish report. Referring to paragraph 2 of the report, which described a wide range of guarantees for the protection of human rights, he asked what the precise competence of the Constitutional Court was with regard to individual cases and what action it could take on final decisions rendered by a lower court? Was it entitled to quash such decisions and instruct those courts to review their cases, and in what ways could it defend the fundamental rights of the individual?

16. With reference to paragraph 24 of the report, and to the plans to overcome the enormous backlog of cases by increasing the number of judges and courts, he requested the Spanish delegation to give a more precise picture of the current situation as far as the backlog was concerned and to state the average length of time taken for civil and criminal cases to come to court.

17. Mr. WENNERGREN welcomed the delegation of Spain and expressed appreciation for its third periodic report. With reference to paragraph 2 (c) of the report, he wondered how long the proceedings took if judicial means first had to be exhausted before an application for amparo could be made. The system might not be efficient if such a lengthy process was necessary.

18. In connection with paragraph 71 of the report, he inquired what the position had been before several articles of the 1984 Organization Act No. 8 had been declared unconstitutional, and whether there had been any proceedings before the ordinary courts which had been taken on appeal to the Constitutional Court by an individual? Paragraph 20 of the report made reference to the Universal Declaration of Human Rights, article 1 of which stipulated that human beings should act towards one another in a spirit of brotherhood. Had that principle been taken into account in Spain? Did public officials, for example, have a code of ethics in which it was reflected? Indeed, was it reflected in any instrument at all?

19. Mr. Serrano Caldero took the Chair.

20. Mr. ANDO said that he had been impressed by the tremendous changes which had taken place in Spain in the past 20 years and hoped that that improvement would continue. He, too, thanked the Spanish delegation for its concise report and oral presentation, and welcomed Spain's ratification of the Optional Protocol and its accession to the European Convention on Human Rights.

21. Referring to the question raised by Mr. Fodor in connection with paragraph 24 of the report, he asked whether the efforts being made to overcome the backlog were producing results and whether some statistics could

be supplied. He also inquired whether the Spanish courts had experienced any difficulties in the accelerated training of judges and the establishment of courts in the five-year period mentioned, and what those difficulties were.

22. Mr. MYULLERSON said that the Spanish report was in conformity with the Committee's guidelines, and provided a comprehensive and useful picture of Spain's legislation and practices in the implementation of standards in civil and political rights, although more information on the difficulties encountered in guaranteeing those rights would have been useful. He endorsed the questions raised by previous speakers, particularly Mr. Ando, and felt that the efforts of the Spanish Government to guarantee the primacy of law in the country, notably through additional budgetary allocations and increased numbers of judges and courts, had been crucial and set an example to many other States.

23. While the meaning of the various nuances in the Spanish Constitution could be guessed at, some clarification of article 11 in particular would be useful. Did article 11 (2) mean that only naturalized citizens could be deprived of their nationality? In connection with paragraphs 15 and 16 of the report, he requested clarification of the phrase "without any problems of enforcement".

24. Mr. EL-SHAFEI expressed satisfaction with the content of the third periodic report of Spain and that country's constitutional and legal developments over the past 10 years. It was particularly significant that the Covenant had been incorporated very closely into the Constitution; that course of action set a good example to other countries wishing to make a peaceful change to democracy. He wondered, however, whether the Covenant was used as a source of interpretation or codification, whether it represented a blanket act dealing with freedoms and rights, and whether there had been any law prior to its incorporation which had been rescinded because of its incompatibility with the provisions of the Covenant. Was there, for instance, any remedy against the possible infringement of a right provided for in the Covenant but not yet established in domestic law?

25. Mr. Lallah resumed the Chair.

26. Mr. POCAR commended the third periodic report of Spain, which was of particular interest to him, coming as it did from a country with cultural and economic links with his own country and with a similar legal system. He had noted with satisfaction that many of the bills on human rights issues that had been before the Spanish Parliament at the time of the Committee's consideration of the second report had since been enacted, and that striking legislative progress had been made in implementing the rights guaranteed by the Covenant. He particularly welcomed the activities of the People's Advocate (Defensor del Pueblo) and the highly competent manner in which they were performed.

27. He noted that in paragraph 1 (d) of the report percentages were given for the various types of complaint with which the People's Advocate had dealt, but not all types were shown. He would appreciate precise information on the number of complaints concerning rights specifically covered by the Covenant that had been so dealt with. He would also welcome further information on the agreements between the People's Advocate and his opposite numbers in the various Autonomous Communities under Act No. 36/1985, and on the sharing of competence between them. Was there a rigid division or could the central People's Advocate take the place of the local officials in appropriate cases?

28. He noted that Organization Act No. 2/86 had established as a fundamental responsibility of the security forces respect for the law and the eradication of any discrimination on grounds of race, religion or opinion. He asked why only those three grounds were mentioned while others referred to in article 2 of the Covenant were omitted. He was particularly concerned at the absence of any reference to language and national origin, in a country which had a number of languages and national communities.

29. Mr. COORAY commended the comprehensive report and oral introduction. The Spanish Constitution was one of the most carefully-drafted democratic constitutions in existence, particularly with respect to the protection of fundamental rights and effective remedies for their violation. Since the advent of democracy and the adoption of the present Constitution, Spain had made tremendous progress in the protection of human rights.

30. He would welcome some explanation as to how it could be said, as in paragraph 20 of the report, that because the Covenant was a source of interpretation for the rules relating to the fundamental rights and liberties recognized by the Constitution, the wording of the Covenant prevailed in the event of a divergence between the Covenant and the Constitution.

31. During the examination of Spain's second periodic report, he had raised the question, in relation to the effective remedies provided for under article 2 (3) of the Covenant, of the right to habeas corpus in a state of emergency, and the Spanish representative had referred to article 55 (1) of the Constitution permitting the suspension of that right at such a time, and to article 116 governing states of emergency and states of siege. Bearing in mind the fact that Organization Act No. 5/84 had prohibited the suspension of the right of habeas corpus in relation to terrorist acts, he asked why the constitutional remedy and safeguard of habeas corpus should not be available to prevent the abuse of emergency powers to arrest or detain persons without justifiable cause.

32. Mr. BORREGO BORREGO (Spain) expressed gratitude for the complimentary remarks that had been made about Spain's transition to full democracy and said that the process of protection of civil and political rights was never fully completed in any country. Such rights were frequently under attack and protection measures must be constantly brought up to date to deal with the situation.

33. The Spanish Civil Code stipulated that international agreements signed by Spain became part of domestic law. The Covenant was therefore an integral part of Spanish law and was directly and automatically applicable. When complaints were made about the violation of fundamental human rights, frequent reference would be made to the Constitution, the Covenant and the European Convention on Human Rights. The Covenant did not take precedence over the Constitution, but it ranked equal with the various fundamental laws. The authors of the 1978 Constitution had been concerned to ensure that the laws providing for fundamental rights and freedoms were adopted by a substantial majority, and a provision to that effect had been included in article 81 of the Constitution relating to the fundamental laws. Any law relating to rights and freedoms which had failed to command a three-fifths majority was considered unconstitutional, as in the case of the exchange control law.

34. The Spanish Constitution required not only the enforcement of domestic fundamental laws and international treaties and covenants, but the interpretation of rights and freedoms based on those international instruments, hence the interpretation provision in article 10 (2) of the Constitution. If, for example, there was any discrepancy between a particular rule of law and the corresponding provision in the Covenant, the interpretation must be in conformity with the Covenant. The Constitutional Court had taken many decisions in which it had not only expressly invoked the Covenant, but had also referred specifically to decisions of the European Court of Human Rights.

35. Reference had been made to an apparent discrepancy between article 14 of the Constitution and article 2 (1) of the Covenant with respect to discrimination and the principle of equality. The grounds of colour and national origin could be considered as covered under the ground of race. The spirit of the law was that there was absolute prohibition of discrimination on any ground. When recourse was made to the remedy of amparo (enforcement of constitutional rights) with respect to violation of the principle of equality, the burden of proof lay on the person accused of that violation. The burden of proof could be similarly reversed in other cases, for example, under a recent law on labour procedure, which provided for the imposition of a fine of up to 15 million pesetas for discrimination in the work place on the ground of sex. An act had recently been published in the Official Gazette replacing the words "husband" or "wife" by the word "spouse" in all relevant articles of the Civil Code as a means of avoiding discrimination.

36. In connection with paragraph 36 of the report, it had been asked why aliens were not entitled to hold public office involving the exercise of authority. Civil and political rights in general were granted to aliens, but the holding of public office was reserved for Spanish nationals, although aliens were entitled to vote in municipal elections, in accordance with the principle of reciprocity, in cases established by treaty or by law. Spain was studying with particular interest a draft convention on the rights of aliens in States members of the Council of Europe.

37. It had been asked, in connection with article 55 of the Constitution, whether the remedy of amparo continued to be available during states of emergency. There had been no state of emergency since the establishment of democracy in Spain, but in such an eventuality there would be no suspension of the constitutional rights provided for in article 24. The right to effective legal protection and effective access to the courts and to justice remained permanently in force. On the question of unconstitutionality, the Constitution provided for an opportunity to contest a law on that ground. Such unconstitutionality might arise as a result of an administrative or governmental act or of a law itself. Under article 24 of the Constitution every person had the right to effective protection. Among the remedies available were the remedy of amparo and the remedy of challenging a law on the ground of unconstitutionality. That procedure had been developed in the Constitutional Court Organization Act. When a law adopted by a court was considered unconstitutional, it could be brought before the Constitutional Court by the People's Advocate or a Member of Parliament.

38. The remedy of amparo could be applied for in respect of a violation of fundamental rights and freedoms. Private property and inheritance rights recognized under article 33 of the Constitution were not fundamental civil and

political rights and the remedy of amparo could not be employed in such cases. It was, however, directly applicable to the rights provided for in article 14 concerning equality before the law. The vast majority of cases in which amparo was applicable came under that article and article 24 on the right to effective protection of the law. The remedy had recently been invoked against the practice of requiring spouses to submit a joint income tax return. The constitutionality of the income tax law had been successfully questioned on the ground that it violated the equality of the sexes. It was clear, therefore, that the public could seek the non-application of a law that was contrary to the Covenant and was unconstitutional.

39. It had further been asked whether a remedy could be sought if the Covenant was violated. Legal proceedings of any kind could be taken in such a case, since the Covenant was fully incorporated into domestic legislation.

40. The Committee had also asked about the parliamentary committees (see document CCPR/C/58/Add.1, para. 2 (f)). The committees were purely investigative bodies which considered complaints and transmitted their findings to the appropriate authority, such as the Public Prosecutor (Ministerio Fiscal) or the People's Advocate, who were legally competent to take action.

41. Since the Covenant had been incorporated into Spanish domestic legislation, its provisions were directly applicable. For instance, the principle of equality laid down in the Covenant had been used to justify the payment of a pension to a widower as well as to a widow. The principle of non bis in idem (i.e. that no one should be tried twice for the same offence) had also recently been endorsed by the Constitutional Court.

42. Members had asked about the scope of the legislation passed by the Autonomous Communities, compared with that passed by the central Government. Articles 148 and 149 of the Constitution laid down the areas of competence of the Autonomous Communities and the State respectively. The State had exclusive jurisdiction in areas such as nationality, immigration, defence, international relations and the administration of justice, while the Autonomous Communities had complete or partial jurisdiction in certain other areas. For instance, the State passed the legislation which laid down the basic structure of the civil service, but each Autonomous Community adopted its own legislation which supplemented, but did not conflict with, the laws passed by the State.

43. In reply to the question about the criteria used by the Constitutional Court to resolve a conflict between the laws of the State and those of the Autonomous Communities, he said that the Constitutional Court relied exclusively on the provisions of the Constitution. The report stated that there had been no problems in enforcing the decisions of the Constitutional Court (see para. 16), and that was entirely true. All the decisions of the Constitutional Court had been scrupulously complied with by all the public and political bodies concerned. To give one or two examples, in one of its first rulings, the Constitutional Court had recognized the competence of the Catalan Autonomous Community to run its own transport system. In 1984, the Court had recognized the competence of the Basque Community to control its own urban planning, which had been a most controversial decision because it gave the Community control over the ports, which had previously been the responsibility of the State. Fewer and fewer such cases had come before the Constitutional Court in recent years, as the discrepancies between State and Autonomous Community legislation had been gradually removed.

44. The Committee had inquired what would happen if a law adopted after Spain's accession to the Covenant was found to infringe its provisions. In such a case, the procedure applied would be the same as that for determining the unconstitutionality of a law: the Court might be asked to decide whether a norm was unconstitutional in itself, without reference to a particular case, or whether it was unlawful prior to its application in a particular case. The amparo procedure could be invoked if the case involved violations of fundamental rights.

45. It had also been asked whether the Consitutional Court could overturn the decisions of lower courts. That Court was entirely independent of Parliament, the executive and the judiciary. Its only task was to interpret the Constitution and decide whether other laws were consistent with it. In a recent case (October 1990), an individual had invoked the remedy of amparo, claiming that he had been sentenced twice for the same offence in violation of the principle of non bis in idem. The Constitutional Court had ruled in his favour and overturned the decision of the lower court, which had violated that principle.

46. There had been several questions about the right to a fair trial and the administration of justice. His Government had devoted considerable human and financial resources to the practical improvement of the administration of justice. Between 1982 and 1987, the personnel budget had more than doubled, and the amount spent on goods and services had almost quadrupled. Between 1982 and 1990, the number of judges had risen from 2,036 to 3,032.

47. In the past, judges had been appointed after lengthy studies and a complex selection process, but now that more judges were needed to cope with the enormous backlog of cases, efforts were being made to speed up the process without sacrificing the judiciary's high standards. Experienced lawyers could now be appointed directly to the judiciary by the Ministry of Justice. Contrary to some expectations, there had been no rivalry between the "career" judges, appointed under the old system, and the new, directly appointed judges, who were completely integrated into the judicial system. The numbers of lawyers and other legal staff emloyed had also risen sharply.

48. The Committee had asked about access to legal remedies for poor people. The Government had reduced the stamp duties payable on legal decisions (see para. 38 of the report) and had increased the budget for free legal assistance to more than 6 billion pesetas. The legal system, dating from the nineteenth century, had been completely remodelled, and new judicial bodies were being set up at a rate of more than one a week. Naturally, such reforms were extremely expensive.

49. The backlog of cases waiting to be considered was being gradually reduced. The European Court of Human Rights had, however, ruled in one case that the legal process had been excessively slow. In that connection, it was important to remember that there was a special emergency procedure for cases involving violations of fundamental rights. For instance, in a case where the authorities had allegedly violated an individual's fundamental rights, evidence must be presented to the court within five days, and a verdict must be reached within four months, whereas a similar case not involving fundamental rights might take one or two years to complete.

The meeting rose at 1 p.m.

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SUMMARY RECORD OF THE 1019th MEETING

Held at the Palais des Nations, Geneva,
on Monday, 29 October 1990, at 3 p.m.

Chairman: Mr. LALLAH

later: Mr. DIMITRIJEVIC

CONTENTS

Consideration of reports submitted by States parties under article 40 of the Covenant (continued)

Spain (continued)

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The meeting was called to order at 3.10 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (agenda item 4) (continued)

Third periodic report of Spain (CCPR/C/58/Add.1 and Add.3) (continued)

1. The CHAIRMAN invited the Spanish delegation to reply to the question in section III of the list of issues:

"III. State of emergency (article 4)

With reference to paragraph 46 of the report, please clarify whether there is any maximum time-limit for the detention of persons suspected of participating in terrorist offences."

2. Mr. BORREGO BORREGO (Spain) said that, under an earlier anti-terrorist law, which had been repealed by the Constitutional Court and replaced by Organization Act 4/1988 - which was also covered in section VII of the list of issues - the period of detention of persons suspected of terrorist acts was 72 hours, which could be extended by a further 48 hours if a judge decided that there was good reason to do so.

3. Ms. CHANET said that Spain's report seemed to be most comprehensive, and she congratulated the country on the level of democracy it had achieved. With particular reference to section III of the list of issues, she had been surprised to see that article 55 of the Spanish Constitution dealt both with the suspension of rights and freedoms under a state of emergency or siege and with the suspension of certain individual rights in connection with specific types of offence. Article 4 of the Covenant certainly provided for derogation from the obligations arising from certain rights, but only under strictly defined and limited conditions. Article 55 (2) of the Spanish Constitution made no reference to the temporary and exceptional nature of any suspension of the rights of terrorists, so that apparently such suspension was governed by ordinary law. If so, the situation would be rather alarming, since it created a sort of permanent state of emergency as far as that category of offenders was concerned.

4. It also seemed strange that the same article should cover not only states of emergency, but also circumstances that might give rise to permanent emergency legislation. In her opinion, the two issues should be separated. Some rights, such as the right to confidentiality of communications or the inviolability of the home, could be restricted for legitimate reasons in accordance with article 17 of the Covenant. Certain other individual rights and freedoms might also be limited, but under article 9. It was essential, therefore, to maintain the distinction between rights which could be derogated from in emergency situations - which were, by their very nature, temporary - and rights which could be derogated from only in very specific situations involving certain serious or minor offences.

5. The new legal procedure mentioned in paragraph 46 of document CCPR/C/58/Add.1 required further explanation. Article 55 (2) of the Spanish Constitution provided for a guarantee consisting of "intervention by the courts" and "parliamentary control" in the case of suspension of the individual rights set out in articles 17 (2), 18 (2) and 18 (3) of the Constitution. She

asked what was meant in the new law by "intervention by the courts", since paragraph 46 also stated that, if the case was urgent, the decision to suspend the rights in question might be taken by the Ministry of the Interior. In particular, she would like to know what the Ministry of the Interior was able to do; what was the nature of "parliamentary control"; whether it meant that the suspension must be endorsed by law or whether control was exercised a posteriori; and what role the Peoples' Advocate (Defensor del Pueblo) played in the derogation process.

6. Mr. MAVROMMATIS said that the report, although concise, contained all the information the Committee needed to carry out its work. It also showed the considerable and sustained progress achieved in the protection and promotion of human rights and fundamental freedoms. As the Spanish representative had said, Spain's transition to democracy was now complete. However, he noted that the promotion and protection of human rights and fundamental freedoms was an ongoing task.

7. He had observed, like Mr. Myullerson, that the report made no mention of the factors and difficulties that impeded the full enjoyment of human rights and fundamental freedoms. Nevertheless, such difficulties did exist - one example being the terrorism associated with some forms of separatism. It would be very useful to have some information on that point, because such matters were of direct relevance to article 4, even if no state of emergency had so far been declared in Spain.

8. Paragraph 40 of document CCPR/C/58/Add.1 stated that a whole range of rights could be suspended in "extraordinary situations which make it impossible to maintain normal conditions through the ordinary powers of the competent authorities". He wondered whether the situations in question were different from - and less serious than - those provided for in article 4 of the Covenant, which covered a public emergency that threatened the life of the nation. It was possible to imagine extraordinary circumstances that made it difficult to preserve normality. However, it was to be feared that the provision in question might be interpreted very broadly, in a manner incompatible with article 4 of the Covenant.

9. Article 55 (2) of the Constitution referred to "armed bands" and "terrorist groups"; that was rather unusual in an instrument of that kind, which was supposed to be the supreme abiding legal instrument of the country. Of course, States experiencing terrorist action must take the necessary measures to stop it. However, such measures must be consistent with the provisions of the Covenant, and he would welcome the reassurance that the rights of all people who were arrested and deprived of their freedom were protected, even if they were terrorists, and that, in particular, they had the opportunity to obtain the assistance of a lawyer. Spain had many organizations and institutions working for the protection of human rights and fundamental freedoms, but it was advisable for those rights to be embodied in the legal instruments of the country.

10. Mr. AGUILAR URBINA recalled that the report mentioned two emergency situations, a state of exception and a state of siege; however, at the previous meeting, the Spanish representative had mentioned two others, a state of alert and a state of disturbance. He asked what difference there was between those situations and, in particular, which rights were suspended in a state of exception and which in a state of siege.

11. Article 55 (2) of the Constitution stated that the decision to suspend individual rights took the form of an organization act, which was a law adopted by a three-fifths majority of the members of the Cortes. Did that mean the Cortes generales or the Cortes of the autonomous communities? Was that type of legislation subject to a time-limit and, if not, was there a rule providing for its review by the legislative authorities after a certain time?

12. Finally, he would like to know whether article 55 of the Constitution could be interpreted in a broader sense in order to increase the number of rights that could be suspended, for instance by citing the fact that the Covenant permitted the suspension of rights which were not covered by article 55.

13. Mr. FODOR agreed with Ms. Chanet about the need to distinguish between the two categories of rights covered by article 55 of the Constitution. According to paragraph 45 of document CCPR/C/58/Add.1, the new law dealt with violent crime in general, whether it was committed by armed gangs or by terrorist groups, in view of the "peculiar nature of such crimes". He wondered how that "peculiar nature" was covered in the Spanish legal system and in the practice of the authorities and the courts. He would also like to know whether the list of grounds for derogation listed in paragraph 46 of the report, which were applicable to suspected terrorists, was an exhaustive one, or whether other limitations were applicable to that category of suspect; what was the maximum length of time that a suspected terrorist could be held incommunicado, and could the Ministry of the Interior intervene in all urgent cases, or only in the case of a suspected terrorist?

14. Mrs. HIGGINS agreed with all that Mr. Mavrommatis had said, both about the progress achieved in Spain and about the lack of references to the difficulties impeding the enjoyment of human rights and fundamental freedoms. Like Ms. Chanet, she also felt that certain questions covered in the report under article 4 really came under other articles of the Covenant.

15. As she understood it, if article 4 of the Covenant was invoked in Spain - or, in other words, if a state of emergency was proclaimed - one of the rights which could be suspended was the maximum period of 72 hours for which a person could be detained without being brought before a court. She noted that the former law on terrorism had been incorporated into the new Penal Code, which was a good thing, but the provision relating to custody had been retained in the new law. Why had it been considered necessary to make provision for extension of the custody period?

16. Finally, she reserved the right to ask further questions under article 9 of the Covenant about certain points, such as incommunicado detention and communication with a lawyer, referred to in paragraph 46 of the report.

17. The CHAIRMAN explained that the Committee had decided to ask the question contained in section III of the list of issues because Spain's third periodic report dealt with the matter under article 4 of the Covenant and the Committee had to ascertain whether the derogations provided for under that article and permitted by Spanish legislation were associated exclusively with states of emergency and that there were no half-way situations that might allow individuals, such as terrorists, to be subjected to more stringent measures than other members of society.

18. Mr. MYULLERSON said that he, like Mrs. Higgins, would ask his questions during the discussion on article 9.

19. Mr. BORREGO BORREGO (Spain) said that a system for the protection of human rights proved its effectiveness if it also protected people who violated those rights - terrorists, for example.

20. In reply to the various questions put to him, he said that the suspension of individual rights was dealt with in the same article as the suspension of general rights simply because the authors of the Constitution had placed the suspension of rights and the suspension of freedoms in the same chapter. The important thing was that the Constitution allowed for a general suspension of rights in a state of alert, exception or siege, and the suspension of individual rights in other specified cases. Incidentally, he explained that his reference to a state of disturbance had been a mistake, and that no such thing existed. The Committee should also note that the Constitution always spoke of "suspension" and never of "derogation". The question whether terrorist crimes should be covered by the Penal Code had been the subject of considerable debate in Spain, but it had eventually been decided to include them in the Code rather than in a special law.

21. An organization act was required in order to proclaim the state of alert, exception or siege provided for in article 55 (1) of the Constitution, because such a decision affected the rights and freedoms of the individual. Organization acts could be adopted only by the Cortes generales, in accordance with article 149 (1) of the Constitution, which said that the State enjoyed exclusive competence in a number of areas, including the regulation of the basic conditions guaranteeing the equality of all Spaniards in the exercise of their rights and in the fulfilment of their constitutional duties. The duration of states of alert, exception and siege was always limited. Article 116 of the Constitution said that a state of alert was declared by the Government, by means of a decree of the Council of Ministers, for a maximum period of 15 days. A state of exception was declared by the Government, by means of a decree of the Council of Ministers, after prior authorization by the Congress of Deputies; its duration might not exceed 30 days, and it could be extended for a further 30 days under the same conditions. A state of siege was declared by an absolute majority of the Congress of Deputies exclusively on the proposal of the Government, with the Congress deciding its territorial coverage, duration and terms. No state of emergency had ever been declared.

22. In respect of the suspension of certain individual rights, governed by article 55 (2) of the Constitution, he pointed out that, as the article itself said, criminal responsibility attached to unjustified or abusive use of the powers recognized in the said organization act on the grounds of violation of the rights and freedoms recognized by the law.

23. On the subject of investigations of the activities of armed bands or terrorist groups, he said that the detention of suspects must, in the first place, be based on a substantiated order issued by the judiciary, and should not last longer than 72 hours plus 48 hours, or five days in all. Incommunicado detention must be ordered by the judge, who then determined the circumstances of that type of detention. In other words, where that kind of imprisonment was applied, the forces of law and order remained under the permanent control of the judiciary. The detainee had the assistance of a lawyer at all times. The lawyer was, however, appointed by the court, since

experience had shown that there was often a very special relationship between the lawyers serving such groups and the terrorist suspects. Moreover, all terrorist suspects detained were examined by a doctor appointed by the judiciary; such examinations were carried out frequently - in some cases twice a day. Lastly, the judge who ordered and controlled the incommunicado detention could allow the detainee to communicate with a lawyer of his choice and not with the officially appointed lawyer if the judge saw fit. The power of the Ministry of the Interior to authorize the interception of communications addressed to terrorist suspects was embodied in article 579 (4) of the Criminal Prosecution Act (see document CCPR/C/58/Add.1, para. 46). Such interception constituted a suspension of the obligation to respect an individual's private life and, in Spain, required the adoption of an organization act by three fifths of the members of Parliament.

24. Mrs. HIGGINS said that she understood from the Spanish representative's remarks that the fight against terrorism - which was supported by all - was institutionalized in the Constitution as an ongoing process and that, consequently, the relevant provisions of Spanish legislation occupied a rather grey area between article 4 and other articles of the Covenant.

25. Paragraph 46 of document CCPR/C/58/Add.1 stated that a terrorist suspect could be held incommunicado even if no state of exception existed, but that the person could exercise his right to communicate with counsel. However, according to the remarks just made by the Spanish representative, although the suspect could communicate with a lawyer, he did not have the right to choose the lawyer, which was inconsistent with article 14, paragraph 3 (b) of the Covenant. As Spain seemed to be the only democratic country in Europe which had such a provision she would like to know the reasons for that restriction. Moreover, even though a detainee who was being held incommunicado was able to communicate with a lawyer, direct contact between them was not allowed. In that case, too, the rights of a detainee under articles 9 and 14 of the Covenant seemed to be infringed. Such measures should, therefore, be justified either by a state of exception in the sense given in article 4 - which was not the case - or by the terms of the articles themselves, and she could see no way of doing that.

26. Mr. WENNERGREN asked for more details about incommunicado detention, since it seemed that a suspect could be held incommunicado for the first three days after his arrest without a judicial order, although any extension must be authorized by the court. However, he failed to see how the procedure worked in practice, because in some cases it would be impossible to obtain court authorization.

27. The CHAIRMAN, speaking in his personal capacity, asked the Spanish delegation to clarify whether paragraph 1 of article 55 of the Constitution was the only provision applicable in the case specified by article 4 of the Covenant, with paragraph 2 covering terrorism. The Committee might then have a better understanding of the justification for Spain's anti-terrorist measures when it went on to discuss articles 9, 14, 16 and 17 of the Covenant.

28. Mr. BORREGO BORREGO (Spain) said that no provision authorized the suspension of any of the rights recognized in articles 6-8, 11, 15 and 16 of the Constitution.

29. Mr. AGUILAR URBINA said that the Committee's doubts might be due to the wording of the report. The paragraphs dealing with article 4 of the Covenant and, in particular, paragraph 44 of the report referred to "various temporary laws" which had been "enacted to deal with the situation created by terrorist attacks". He would like to know the details of those laws, given that article 4 of the Covenant provided for derogation from certain rights only during a state of emergency.

30. Mr. BORREGO BORREGO (Spain) agreed that the reference to the possibility of temporary suspension of rights in a paragraph dealing with article 4 of the Covenant might have given rise to confusion, and that it would have been better to mention that possibility in the section on article 9 of the Covenant. He explained that the rights which could be suspended in order to facilitate investigations in the fight against terrorism were those set out in article 17 (2) and article 18 (2) and (3) of the Constitution.

31. The CHAIRMAN invited the Spanish delegation to reply to the question in section IV of the list of issues:

> "IV. Non-discrimination and equality of the sexes (articles 2 (1), 3 and 26)
>
> Please provide additional information concerning the activities and accomplishments to date, as well as future plans, of the Institute for Women. (See para. 29 of the report.)"

32. Mr. BORREGO BORREGO (Spain) noted that the Spanish Civil Code, which had been drawn up in the nineteenth century, contained various provisions that hampered the full realization of the principle of equality. For that reason, a number of major changes in the legislation had been made very recently; in particular, Act 11/1990 of 15 October 1990, which reformed the Civil Code as far as the principle of non-discrimination between the sexes was concerned. Articles 93 and 94 of the Labour Relations Act also stated that any measure which caused discrimination must be justified on objective, reasonable and adequately substantiated grounds. Act 3/1989 of 3 March 1989, which extended the duration of maternity or paternity leave to 16 weeks, also stated that a job would be kept open for one year for a parent who wished to take time off to look after children. Sexual harassment was punishable by fines of up to 15 million pesetas.

33. In the past, a couple's separation had often, in practice, resulted in financial hardship, which generally affected the wife since there were no provisions for enforcing the payment of alimony. Default was now an offence under the 1989 Penal Code. Measures had also been taken in 1989/1990 to make it easier for women to join the armed forces, the State security forces and even the Guardia Civil; women were now well represented in those various bodies. Many efforts had been made to eliminate all sexist stereotypes from school textbooks, and particular attention was paid to the portrayal of women in advertising.

34. The Institute for Women had already achieved considerable progress in the promotion of equality. The number of women in responsible jobs, and even political posts, was constantly increasing. More and more women were passing the civil service entrance examinations.

35. Mr. Dimitrijevic took the Chair.

36. Mr. ANDO asked for further information, with examples if possible, about the participation of aliens in political activities, with particular reference to the right to vote in municipal elections, which could be granted to aliens.

37. Mr. FODOR asked whether article 14 of the Spanish Constitution was completely consistent with the Covenant, since the grounds for discrimination given in that article did not entirely correspond to those contained in the Covenant. Article 14 began with the phrase: "Spaniards are equal before the law", which was surprising since, in the other articles, the terms used were "all individuals", "all", or "anyone". He would welcome an explanation of that point.

38. Mr. WAKO emphasized the high quality of Spain's third periodic report, which covered all the subjects of concern to the Committee. The questions left in abeyance during the consideration of the second periodic report (CCPR/C/32/Add.3) had been covered in the third report or in the Spanish delegation's oral statement.

39. It would be interesting to know how the Institute for Women functioned and, in particular, whether it could receive complaints of discrimination on grounds of sex and, if so, what action it could take.

40. The statistics given in paragraph 39 of document CCPR/C/58/Add.1 showed how much progress Spain had made in the area of women's participation in the civil service; however, in order to get a more complete picture of the situation, he would like to know the proportion of women in the education system, particularly at university level.

41. He would also like to know whether, in practice, the Constitutional Court or other courts had had to deal with violations of the principle of equality between the sexes and, if so, what decisions they had reached.

42. He asked whether a woman could accede to the throne of Spain and, if not, whether Spain intended to change the situation.

43. Spain's progress in achieving equality between the sexes was impressive, but he wondered whether any difficulties had been encountered along the way. Details of any specific factors which had impeded progress in that area, and the measures taken to overcome them, would be useful for other countries.

44. Finally, he had heard of cases of traffic in women, many of them minors, along the border with Portugal, and wondered whether they were merely unfounded allegations or genuine, in which case he would like to know what the authorities had done in an effort to put an end to such practices.

45. Mr. BORREGO BORREGO (Spain) explained that aliens were allowed to vote in municipal elections on the basis of reciprocity, in other words if they were citizens of a country in which Spaniards enjoyed the same right. They could, then, vote to elect mayors and members of municipal councils.

46. The difference in the terms employed in article 2, paragraph 1, of the Covenant and article 14 of the Constitution was merely a matter of wording; all grounds for discrimination contained in the Covenant were recognized, both

in spirit and in practice. Since the new Spanish Constitution had been proclaimed in 1982, there had been no cases of discrimination on grounds covered by the Covenant but not by the Constitution.

47. Article 14 of the Constitution referred to "Spaniards" because any constitution was intended solemnly to affirm certain principles - in the present case the fact that Spaniards were equal before the law. However, the article should be read in conjunction with article 13 (1) of the Constitution, which stated that aliens in Spain enjoyed public freedoms, which were guaranteed as laid down in treaties and the law; the Covenant was one of those treaties, and aliens therefore enjoyed the same protection and the same rights as Spanish citizens.

48. The Institute for Women was one of the most effective bodies that had been established to guarantee the principle of equality. The plan for 1988-1990, which had already been largely implemented, provided for a wide range of training courses. The campaign to offer women the same employment prospects as men was being conducted unceasingly on all fronts. Every effort was made to instil into children, from their earliest years, the idea that any discrimination on grounds of sex must be rejected. The employment situation of women had improved spectacularly, and the number of posts they occupied in both the private and the public sectors was increasing steadily. He had no statistics on the number of women in the education system, but the number was certainly over 50 per cent. Almost all areas of the civil service were employing more and more women, and the number of women running private companies was also far from negligible.

49. The situation in the workplace was also improving, and discrimination against a female employee because she had children, or simply because she was a woman, was a punishable offence. In the same way, anyone who practised sexual harassment was liable to a fine.

50. The succession to the throne of Spain was governed by article 57 (1) of the Constitution, which stated that "succession followed the usual order of primogeniture and representation, with preference always being given to the earlier line over the later ones; within the same line, to the closer degree over the more distant one; within the same degree, etc." Therefore, although it was not impossible for a woman to accede to the throne of Spain at some point, there was an explicit bias in favour of men, as in a very large number of other monarchies. The present King of Spain had a male heir, so the throne would not pass to a woman.

51. He could not say that Spain had experienced many difficulties in advancing the cause of women. The macho reputation of Spain and all other Latin countries was unjustified, as even the directors of the various departments of the Institute for Women would admit. There were no areas where women were not now represented; as a matter of interest, the Committee might like to know that, nowadays, there were even women bullfighters.

52. He had no knowledge of any traffic in women along the border with Portugal but perhaps Mr. Wako was thinking of the sex industry which flourished in Spain, as in many other countries, and which involved not only women but also men. The police were tackling the problem, but it could not be considered to entail discrimination against women. There was a section for the protection of minors, which had recently succeeded in unmasking a crime network that was selling young people into prostitution.

53. The CHAIRMAN invited the Spanish delegation to reply to the question in section V of the list of issues:

"V. Right to life (article 6)

Are there any plans by Spain to ratify the Second Optional Protocol, aiming at the abolition of the death penalty?"

54. Mr. BORREGO BORREGO (Spain) said that Spain was working to abolish the death penalty which, under the Constitution, could be imposed only in time of war and for extremely serious crimes listed in the Code of Military Justice. Spain had ratified the Sixth Protocol to the European Convention on Human Rights. The instrument of ratification of the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty, had been submitted to the Cortes. He made it clear, however, that Spain would enter a reservation to the effect that the death penalty could be applied in extremely serious cases in wartime.

55. Mr. PRADO VALLEJO said he wished to make two remarks. First, he was concerned by the list of crimes given in paragraph 49 of document CCPR/C/58/Add.1 to which the death penalty was applicable. Article 6 of the Covenant stated: "In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes". It emerged from the report that Spanish law prescribed the death penalty for a number of offences, such as disobedience and abandoning a sentry post, which were really disciplinary offences, rather than the serious crimes referred to in article 6. In other words, he was worried about the large number of capital offences which were, in any case, incompatible with article 6.

56. Secondly, he would like to know whether Spain intended to ratify the Second Optional Protocol aimed at the abolition of the death penalty. If so, did the authorities also intend to amend the Code of Military Justice to limit the number of capital offences?

57. Mr. AGUILAR URBINA asked whether the death penalty had been abolished for all offences under the Code of Military Justice listed in paragraph 49 of the report in cases where war had not been officially declared or hostilities had not begun. When Spain sent troops as part of a peace-keeping mission, as to Central America for example - and, incidentally, he wished to thank Spain for its support for the peace efforts made in that area - could a soldier in a war zone or area of hostilities who, for example, abandoned his sentry post or could not bring himself to open fire be condemned to death for abandoning his post or for cowardice?

58. Like Mr. Prado Vallejo, he was concerned by the extent of the offences listed in paragraph 49. He would also appreciate further details about the procedure in force in such situations: presumably defendants appeared before a military court, but could they appeal to a civil court against a death sentence pronounced by a military court and, if so, which civil court would hear the appeal?

59. Mr. FODOR, while welcoming the abolition of the death penalty in Spain in peacetime, was surprised at the large number of offences punishable by death in wartime. He would like to know whether the authorities intended to reduce their number in future. Also, how did the Government interpret the term "war"?

Did it, for example, include civil war and states of exception in certain provinces? He would also like to know how far the Code of Military Justice was applicable to individuals. Some of the offences listed in paragraph 49 of the report (violence against a sentry, etc.), could be committed by civilians, and he therefore wondered whether the Code of Military Justice could be applied to civilians in certain situations.

60. Mr. MAVROMMATIS welcomed the intention of the Spanish authorities to ratify the Second Optional Protocol aimed at the abolition of the death penalty. However, the relevant provisions of the Spanish Constitution, namely, that the death penalty was abolished "except as provided for by military criminal law in wartime" did not necessarily correspond exactly to the concept of serious crimes referred to in article 2 of the Second Optional Protocol. He hoped that the Spanish authorities would consider that point when they drew up their reservation to the Second Optional Protocol, and that they would make sure that the concepts embodied in national legislation and in the Protocol were identical.

61. In both article 2, paragraph 1, of the Second Optional Protocol and article 6 of the Covenant, the death penalty was prescribed only for the most serious crimes. Clearly, the many offences listed in paragraph 49 of the report could not be considered extremely serious crimes within the meaning of those two provisions. He shared the concern expressed by other members about the number and nature of capital offences in Spain, and also wished to know whether all the offences listed were considered to be equally serious.

62. Mr. Lallah resumed the Chair.

63. Mr. ANDO associated himself with the questions and concern expressed by the other members of the Committee, particularly since a number of the offences concerned could be committed by civilians; that would call for extreme caution in the application of the Penal Code.

64. Mr. WAKO also endorsed the remarks and concern expressed by previous speakers. The Committee, in its general comments on article 6 of the Covenant, had stated that States should establish effective facilities and procedures to investigate thoroughly cases of disappeared persons in circumstances that might involve a violation of the right to life. That included persons who might be deprived of the right to life while in detention or custody. The Committee had been informed of allegations of deaths in custody or detention that had been submitted for investigation to the judicial authorities, which, however, had ordered only a partial post-mortem examination. In accordance with the principles adopted in December 1989 by the United Nations General Assembly, investigation procedures in respect of deaths in that kind of situation must provide for a prompt and detailed inquiry as well as an adequate post-mortem examination to determine the date and circumstances of death. Did Spain have procedures that met those criteria and, if the allegations were found to be true, on the basis of which provisions had partial post-mortems been carried out, contrary to the above principles?

65. Mr. BORREGO BORREGO (Spain) conceded that the wording of paragraph 49 of the report was unfortunate, because it might suggest that the death penalty was mandatory for the offences listed, which was not the case. He quoted articles from Organization Act No.13/1985 concerning the Code of Military Justice to show that the death penalty was certainly not automatically

applicable: it was only one of the punishments possible in wartime and in certain circumstances. The term "war" was defined in the Constitution. Only the King of Spain could declare a state of war, with the prior authorization of the Cortes. Incidentally, the Committee should not confuse war with terrorism, or with the status of peace missions sent by Spain to conflict-torn countries. The death penalty was accordingly only one of several possibilities, and it could be imposed only during a genuine and formally-declared war. In no circumstances could the death penalty be imposed on individuals convicted of terrorism in peacetime.

66. The problem of disappearances for political reasons was unknown in Spain. The sole case of disappearance since the establishment of democracy in Spain had had no political implications: a general law detainee had disappeared, and the police officials responsible for the disappearance had been brought to court, and were currently serving prison sentences.

67. Mr. AGUILAR URBINA said that, apparently, Organization Act 13/1985 referred to "rebels", which gave the impression that the death penalty might be applicable in a time of civil war, if that type of conflict was part of the official definition of "war". He would appreciate further information on that point.

68. Mr. BORREGO BORREGO (Spain) said that the death penalty was applicable only in time of war, which meant "external" war with a foreign power.

69. The CHAIRMAN invited the Spanish delegation to reply to the questions in section VI of the list of issues:

> "VI. Treatment of prisoners and other detainees (articles 7 and 10)
>
> (a) Have there been any complaints during the period under review of torture or cruel, inhuman or degrading treatment of prisoners or detainees? If so, have there been any convictions on such charges?
>
> (b) Please provide additional information on detention in places other than prisons for reasons other than criminal offences (e.g. in police precints, psychiatric institutions, etc.)."

70. Mr. BORREGO BORREGO (Spain) replying to the first question in paragraph (a), said that the only complaint concerning prisoners or other detainees had been made by two members of the terrorist group GRAPO, who had been force-fed while on hunger strike. They had subsequently complained to the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment. In that case, the Spanish authorities had been able to prove that their action had in no way violated any of the fundamental rights of the hunger strikers. In reply to the second question, he said that two municipal police officers, accused of ill-treating a minor during their investigation of a theft, had been convicted. Three members of the Guardia Civil had been tried and convicted the previous year for ill-treatment of a person who had been caught stealing. Lastly, no conviction relating to cases of torture had been pronounced during the period under consideration, since no complaint had been lodged except that by the two members of GRAPO, which he had mentioned above.

71. Replying to paragraph (b), he said that conditions of detention were governed by the provisions of the Constitution and the Penal Code. The maximum length of custody was 72 hours, and the detainee had to be held at a police station. Various regulations governed the act of placing a person under police custody, and supplementary provisions had recently been adopted on the status of prisoners and detainees.

72. Mr. PRADO VALLEJO said that in 1990 the People's Advocate (Defensor del Pueblo), an eminent defender of human rights in Spain, had issued an alarming report which revealed serious cases of ill-treatment and torture by the Spanish police and security forces (national police, municipal police and Guardia Civil). The report drew attention to the persistence of cases of torture, the violence used against detainees and the impossibility of shedding any light on acts of torture because of the opposition of and various forms of obstruction by the law enforcement officials concerned. Those responsible for ill-treatment and torture were never dismissed from their posts and continued to perform their functions, which gave the victims or complainants the impression that the authorities were taking no action at all. The investigation of such cases could last for many years. The picture given in the report was very worrying, and he would welcome further information on the matter.

73. He would also like to hear the Spanish delegation's comments on the case of Mr. Felix Rodriguez Santana, who had allegedly been ill-treated and died as a result of his injuries on 23 July 1989. The Directorate-General of Police had said that the police were not responsible for the ill-treatment and death of the detainee, that had doubtless been caused by his fellow inmates who were said to have beaten him in accordance with the "prison code" (codigo carcelario) applied to child sex offenders. He would like to know what the "prison code" was, since he was concerned about the possible existence of a code that allowed detainees to ill-treat their fellow prisoners.

74. He was also particularly concerned about ill-treatment and torture inflicted during the detention of individuals under the law against terrorism. The law provided for incommunicado detention, which implied almost automatically that the detainee was unable to appoint a lawyer of his choice while in detention, to inform his family or friends of the fact and the place of the detention or to communicate with a lawyer of his choice. The inability of such a detainee to provide for his defence and to communicate with the outside world was extremely worrying.

75. Finally, it seemed that there had been at least one case in Spain of police violence in a political context, and he would welcome further information on the subject.

76. In conclusion, he said he was well aware that abuses and violence might take place in prison without the knowledge of the authorities, which might even at times compromise the goodwill they had shown, as in the case of the Spanish authorities. Similar problems were encountered in a number of countries, including his own, Ecuador. That was why he had given the above examples, and would welcome further information on all the points he had raised.

77. Ms. CHANET said she was gratified by the detail and frankness with which the People's Advocate had described not only the circumstances and conditions of incommunicado detention, but also the ill-treatment which had, regrettably, taken place in Spanish prisons. However, the Amnesty International report went even further, giving many personal accounts of various types of torture. She would therefore like to know what position the Spanish Government had adopted on the information provided by the People's Advocate and, if the Government considered that the information was plausible, what it intended to do to put an end to the abuses.

78. In her opinion, incommunicado detention, particularly in connection with the law against terrorism, was one of the best ways of encouraging torture. Consequently, it would be useful if the Spanish delegation could tell the Committee about the exact nature of that kind of detention and, for instance, whether regulations governed the frequency of interrogation and whether the times and dates of interrogation sessions were recorded. She would also like to know whether a doctor was involved as a matter of course or whether a medical examination had to be requested in each individual case. Was the doctor concerned a prison doctor, a doctor appointed by the Government or a doctor chosen by the detainee?

79. Mr. WENNERGREN noted that the supplementary report (CCPR/C/58/Add.3) gave no details of the regulations governing the deprivation of liberty of persons with a mental illness or the legal guarantees enjoyed by persons confined in psychiatric hospitals. He also asked whether persons suffering from AIDS, for example, could be hospitalized on the grounds that they were a danger to public health. Moreover, it seemed that the right not to be subjected to medical or scientific experimentation without one's free consent, laid down in article 7 of the Covenant, was not guaranteed by the Spanish Constitution, but the supplementary report said nothing about the matter. Finally, he wondered whether the Spanish authorities intended to draw up regulations governing in vitro fertilization and human embryo research.

80. Mrs. HIGGINS noted that the ill-treatment that had been mentioned concerned ordinary prisoners more than political prisoners. She also observed that the problems described in the People's Advocate's report concerned not only the civil municipal police, but also the national police, which revealed the difficulties being experienced at all levels.

81. She would like to know, in particular, whether the Spanish Government intended to speed up the legal process in criminal cases, whether officials could be subjected to disciplinary measures without influencing the result of legal proceedings and whether there was a link between incommunicado detention and the risk of ill-treatment of detainees accused of terrorist acts.

82. Mr. MAVROMMATIS said that there was hardly a country in the world where the police or the security forces in general had never resorted to some form of psychological pressure or torture. That was why it was important to learn about the measures taken by States to reduce the frequency of torture and similar treatment. The first such measure, naturally, was to entrust a completely independent body with a detailed investigation of all cases which occurred.

83. Since torture was essentially a way of obtaining a confession in order to convict a defendant, he wondered in what circumstances an oral or written confession would be considered to be voluntary, whether the courts could

convict a defendant on the strength of a confession, or whether such evidence was automatically rejected, which would probably help to reduce the number of cases of torture.

84. Mr. EL-SHAFEI said that, according to the information provided by the Spanish delegation, non-governmental organizations and the newspapers, there were many abuses of power in Spain, as in many other countries. However, article 55 of the Spanish Constitution stated quite plainly that the unjustified or abusive use of force was prohibited by law. The authorities might admittedly find it difficult to maintain law and order without undue recourse to force, but the violence that had occurred was nevertheless regrettable, and he hoped that the Spanish delegation would convey the Committee's concern to its Government.

85. Mr. BORREGO BORREGO (Spain) said that, as the People's Advocate's report showed, Spain had made considerable efforts to make the prison régime more democratic and to modernize prisons. Between 1982 and 1990, the State budget for the operation of prisons, particularly for the provision of health care and the construction of new buildings, had increased by 30 per cent, and the average State expenditure per prisoner had more than doubled.

86. As for the question of torture and ill-treatment, the Government had approved an Organization Act on 21 July 1989 which prescribed penalties specifically for torture. Because Spain was a democratic State governed by the rule of law, Spanish courts dealt with torture cases as quickly as possible in the context of legal guarantees provided by the law and in accordance with rules that protected human rights. In those regrettable cases where officials went too far in their treatment of an offender, they were duly brought to justice.

87. On the subject of the value of confessions obtained by the police, the Spanish Penal Code stated that such statements did not constitute proof capable of securing the conviction of the accused. As for the "prison code", he thought it might refer to a set of internal rules in the prisons, but he did not quite understand what members of the Committee meant by the expression. However, in accordance with the legislation, a judge from the Office of the Government Attorney visited prisons frequently, as did a visiting magistrate, who received any complaints about prison conditions.

88. Turning to incommunicado detention, particularly in respect of terrorist suspects, he said that all detainees had the right to be examined by a doctor of their choice. Admittedly, there were sometimes cases of ill-treatment in Spain, but it was not a systematic practice and, if it was discovered, legal proceedings were taken and those responsible were punished in accordance with the Penal Code. Spain was a State governed by the rule of law, and if cases of torture were reported, a detailed investigation was immediately begun in accordance with the provisions of the law.

89. The CHAIRMAN said that the Committee would continue its consideration of the third periodic report of Spain at its next meeting. He wished to inform the Committee that the Indian Government had informed him that it would prefer the consideration of India's second periodic report to be postponed until the Committee's next session.

The meeting rose at 6.10 p.m.

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Fortieth session

SUMMARY RECORD OF THE 1020th MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 30 October 1990, at 10 a.m.

Chairman: Mr. LALLAH

later: Mr. COORAY

CONTENTS

Consideration of reports submitted by States parties under article 40 of the Covenant (continued)

Spain (continued)

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The meeting was called to order at 10.10 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (agenda item 4) (continued)

Third periodic report of Spain (CCPR/C/58/Add.1 and 3) (continued)

1. The CHAIRMAN drew attention to the list of issues to be taken up in connection with the consideration of the third periodic report of Spain (CCPR/C/58/Add.1 and 3) and invited the Spanish delegation to continue its replies, beginning with section VI.

VI. Treatment of prisoners and other detainees (articles 7 and 10)

"(a) Have there been any complaints during the period under review of torture or cruel, inhuman or degrading treatment of prisoners or detainees? If so, have there been any convictions on such charges?

(b) Please provide additional information on detention in places other than prisons or for reasons other than criminal offences (e.g. in police precincts, psychiatric institutions, etc.)."

2. Mr. BORREGO BORREGO (Spain), answering a question put by Mr. Wennergren at the previous meeting, said that he had a copy of the ruling of the Constitutional Court relating to certain provisions of the Anti-Terrorism Act, which members of the Committee could consult if they wished. The Court had considered the Act in the abstract, without reference to a particular case, and had ruled that some of its provisions were unconstitutional. The length of time during which a suspected terrorist could be held without charge had since been reduced to five days.

3. The Committee had also asked about the detention of persons suffering from mental illness. A mentally ill person could not be detained against his will except by order of a court and on the recommendation of two physicians appointed by the judge. The same rules applied to a mentally ill person who was serving a prison sentence.

4. Mr. POCAR requested further information about the use of confessions obtained through torture. Paragraph 59 of the report (CCPR/C/58/Add.1) stated that evidence obtained through a violation of fundamental rights could not affect the presumption of innocence. The Spanish representative had stated that a confession would not be accepted by itself, but must be corroborated by other evidence. However, that surely meant that a confession obtained through torture would be taken into account by the court to some extent whereas, as the Committee had pointed out in its general comment on article 7 of the Covenant, no evidence obtained by improper means should be taken into consideration. Was such evidence, in fact, entertained by Spanish courts?

5. The CHAIRMAN, speaking in a personal capacity, asked about the procedure followed in Spanish courts if an accused person claimed that his confession or other evidence had been extracted under torture. Was it incumbent on the prosecution to prove that the evidence had not been obtained by irregular means?

6. Mr. PRADO VALLEJO said that, when members of the Committee asked about possible breaches of duty by the police or the security forces, they were not seeking to apportion blame; they were trying, in a constructive spirit, to help Spain overcome its problems. Spain was now a democracy and the Government was clearly anxious to promote human rights, but it might not always be able to prevent the police from taking the law into their own hands. In that connection, he would like to know what measures were being taken to educate the police about human rights.

7. Mr. COORAY said that, like Mr. Pocar, he had been concerned about paragraph 59 of the report, which implied that evidence obtained through torture might be used in the case against the victim. He, too, would welcome more information on that point.

8. Mr. MYULLERSON said that, according to information before him, the International Committee of the Red Cross (ICRC) had begun discussions with the Spanish authorities in 1986 about conditions in police stations and other places of detention. Why had ICRC broken off those talks in March 1989 and what other information could the Spanish delegation provide about ICRC's inquiries?

9. Mr. BORREGO BORREGO (Spain), replying to the questions about confessions obtained through torture, said it was essential to distinguish between evidence given voluntarily by the accused, without any violation of human rights, and evidence obtained by methods which violated the accused's fundamental rights, including evidence obtained through torture. In the first case, the evidence obtained was admissible, provided that it was confirmed by other evidence. In the second case, the evidence was entirely inadmissible and was considered not to exist for the purposes of the case. Moreover, the official responsible for the violation of human rights was liable to prosecution. Several officials had been convicted of such offences in the past. If a defendant claimed in court that his evidence had been obtained through torture, the responsibility lay with the prosecution to disprove the claim; if the claim proved to be justified, the officials responsible would be prosecuted. In one case, a member of the security forces had reported a senior officer for the ill-treatment and torture of a detainee. The senior officer had eventually been convicted not only of the offence itself, but also for attempting to pervert the course of justice.

10. The Spanish Government did not merely punish members of the police and the security forces who had committed human rights violations. It also sought to prevent such offences by providing human rights training in police academies, as well as organizing refresher courses under the auspices of the Council of Europe.

11. With reference to Mr. Myullerson's question, he had no information about any breakdown of contacts between the Spanish authorities and ICRC. As far as he was aware, relations between Spain and ICRC were excellent.

12. Mr. EL-SHAFEI noted, with reference to article 8 of the Covenant, that there had been a dispute between the Spanish Government and the Spanish trade union confederation about the observance of certain ILO conventions, particularly the Forced Labour Convention, 1930 (No. 29) and the Abolition of Forced Labour Convention, 1957 (No. 105). Moreover, he understood that some

prison authorities had reached agreements with private employers about the employment of convicts, which would be incompatible with ILO rules and article 8 of the Covenant. He would welcome further information on that point.

13. Mr. WENNERGREN observed, also with reference to article 8, that the period of alternative service for conscientious objectors could be increased by up to three months as a punishment (para. 64 of the report). That was surely tantamount to forced labour. What was the Spanish Government's view on the matter?

14. Mr. BORREGO BORREGO (Spain), answering Mr. El-Shafei's question, said that in conformity with the principle enshrined in article 25 (2) of the Constitution, there was no forced labour in Spanish prisons. He did not know of any complaint that prisoners had been forced to work for outside employers. In fact, in many cases prisoners wanted to work, but were unable to find employment.

15. In response to Mr. Wennergren's question about conscientious objectors, he said that the Spanish Government did not consider the extra period of alternative service to be equivalent to forced labour. The length of alternative service was based on that of military service proper, and Spain's practice followed that of many other European countries.

VII. Liberty and security of the person (article 9)

"Please illustrate how the new arrangements set out in Organization Act No. 4/1988 are being actually implemented. (See paras. 71 and 72 of the report.)"

16. Mr. BORREGO BORREGO (Spain) said that Organization Act No. 4/1988 had been amended after the Constitutional Court ruling which he had already mentioned, so that the maximum period of detention without charge of suspected terrorists was now five days. The police and security forces had accepted the ruling, although it was often difficult to investigate a case properly in such a short time. For instance, there had been particular difficulties in the case of a French citizen, a suspected member of the Basque terrorist organization ETA, who had been found to have a long criminal record which had required considerable investigation. Since the adoption of Organization Act No. 4/1988, there had been no allegations of torture or ill-treatment of detainees.

17. Mr. AGUILAR URBINA said that, under article 9 (3) of the Covenant, everyone had the right to be brought to trial "within a reasonable time". However, he noted from paragraph 68 of the report that the period of pre-trial detention in Spain could be up to two years for a very serious offence, or three months for a less serious offence. He did not feel that two years could be considered a reasonable period in any circumstances. Was there any conflict between that provision and the article of the Penal Code mentioned in paragraph 69, which made it an offence for a public servant to delay in "complying with a court order for the release of a prisoner or detainee at his disposal"?

18. Mr. MYULLERSON said that the long period of pre-trial detention referred to in paragraph 68 of the report was hardly consistent with the presumption of innocence. Surely, the length of detention should depend on the complexity of the case, rather than on the seriousness of the alleged offence. A murder case might be very easy to solve and a relatively minor economic offence very complex. Why had the Spanish legislature chosen the criterion of the seriousness of the offence?

19. Was a detainee entitled to request the presence of a lawyer as soon as he was arrested? Were the rules for persons suspected of terrorist offences the same as those for persons suspected of other offences? He understood that persons suspected of terrorist offences were not free to choose their own lawyers. Was that true only during the pre-trial investigation or during the actual trial as well?

20. Ms. CHANET, referring to Organization Act No. 4/1988, inquired whether the time-limit of two years for pre-trial detention was imposed in terrorist cases, what was the average period of detention in such cases and whether the Act contained other provisions relating to detention. Associating herself with Mr. Myullerson's question about paragraph 70 of the report, she requested more information on the rules governing the assignment of a lawyer to detainees charged with terrorist activities.

21. Mr. FODOR agreed with the speakers who considered that the time-limit of two years for pre-trial detention was excessive. It also seemed unreasonable that the detention of a convicted person awaiting the outcome of an appeal should be up to half the duration of his sentence.

22. Associating himself with Mr. Myullerson's comments, he asked how the principle of presumption of innocence could prevail if the duration of pre-trial detention was determined by the seriousness of the charge. Moreover, that provision seemed to contradict article 17 (2) of the Constitution, which established that pre-trial detention might last no longer than the time strictly required in order to carry out the necessary investigation.

23. Mrs. HIGGINS, associating herself with the line of questioning followed by Mr. Myullerson and Ms. Chanet, wondered at what point exactly suspected terrorists were entitled to legal counsel and how the lawyer was chosen. Like Mr. Fodor and Mr. Myullerson, she considered that the criterion for determining the length of pre-trial detention should be not the seriousness of the offence, but the complexity of the case.

24. She would welcome some comment the interpretation of article 9 of the Covenant with regard to the question special treatment in cases of terrorism, especially in the light of the fact that the European Court had rejected arguments for a different interpretation of that article in such cases. Lastly, she asked how habeas corpus was applied, particularly with regard to suspected terrorists. Since the latter were held incommunicado and their cases heard only by the Audiencia Nacional in Madrid, she wondered whether the remedy of habeas corpus was actually used in practice.

25. The CHAIRMAN agreed with other members of the Committee that Spanish anti-terrorist legislation did not appear to be consistent with article 4 of the Covenant.

26. Mr. BORREGO BORREGO (Spain), responding to the Committee's questions on detention, explained that a suspect could be held in custody for a maximum of 72 hours before being brought to trial and that that time-limit could be extended by 48 hours, bringing it to a maximum of 5 days, in cases of alleged terrorism. That period, which had formerly been 10 days, had been reduced to 5 days by a decision of the Constitutional Court based on article 9 (3) of the Covenant. However, suspected terrorists were frequently brought before a judge immediately after being arrested, in conformity with Organization Act No. 4/1988. In ordinary criminal proceedings a person who had been arrested was entitled, under the Constitution, immediately to hear his rights read out and to have access to a lawyer of his choice. If the accused did not wish to choose his own lawyer, a lawyer would be selected by the Bar Association. In proceedings involving alleged acts of terrorism, the accused was assisted by a lawyer appointed ex officio, in order to avoid certain types of communication during the initial period of detention. Under Organization Act No. 4/1988, the lawyer appointed ex officio advised the accused from the time of arrest for a period of up to five days, at which time the detainee was entitled to choose his own counsel and exercise all the rights of a person in his situation. Lawyers appointed ex officio were usually chosen by the President or a senior member of the respective Bar Association.

27. In reply to the questions on pre-trial detention, he said that there were no special provisions regarding acts of terrorism. In Spain, a person was not held in custody unless he had had a prior hearing before a judge and a detention order had been issued on the basis of substantial evidence. Moreover, in the case of an appeal the detention order was without effect until confirmed by a higher court, in conformity with the two-level principle enshrined in the relevant international instruments ratified by Spain. A person could not be held in custody on the basis of a court order in cases where the penalty for the alleged offence was less than six years' imprisonment. By way of example, judges sometimes ordered the detention of persons accused of vandalism for a maximum period of 24 to 48 hours. Although pre-trial detention in the case of offences which carried a penalty of over six years could last up to two years, depending on the nature of the offence and the complexity of the investigation, the accused was generally freed on bail pending the outcome of a protracted investigation. Trials involving acts of terrorism were usually completed in less than one year. In a most serious and complex case currently under way, the suspected terrorist was due to appear before the Court after less than seven months of detention. The remedy of habeas corpus, far from being a dead letter, was frequently used, particularly in cases involving acts of terrorism.

28. Although Committee members had not asked about the nature of the Audiencia Nacional, he wished to point out that not only the Spanish Constitutional Court, but fortunately also non-Spanish courts with nation-wide jurisdiction, for example, the Federal Constitutional Court of the Federal Republic of Germany, had clearly ruled that courts equivalent to the Audiencia Nacional were normal courts. In one case which had come before the European Court of Human Rights, persons convicted of acts of terrorism in Spain had appealed to that Court, which had found two procedural flaws in the proceedings of the Spanish court, flaws that it had considered to be in breach of the European Convention on Human Rights. As a result, the prisoners had been released pending an appeal before the Constitutional Court. That case raised the problem of the execution of rulings of the European Court in criminal cases.

VIII. Right to a fair trial (article 14)

"Please describe what further progress has been achieved in implementing the plan provided for in the Judicial Districts and Establishment Act since the submission of the report. (See para. 113 of the report.)"

29. Mr. BORREGO BORREGO (Spain) reiterated the point he had made in his introduction, namely, that his Government was determined to ensure that the provisions of the Covenant were not only incorporated into Spanish legislation, but also effectively enjoyed by all citizens. Considerable financial and human resources had been devoted in recent years to establishing new courts and tribunals as part of the plan provided for in the Judicial Districts and Establishment Act. That plan, which envisaged one magistrate per 10,000 citizens, had been 85 per cent fulfilled and would be completed in 1992. Under it, numerous courts had been set up in the communities surrounding Spain's largest cities and each Autonomous Community had been provided with a Higher Court of Justice, subordinate only to the Supreme Court in Madrid. Moreover, emphasis had been placed on the principle of a single jurisdiction, rather than various special jurisdictions. Thus the military jurisdiction was currently served by judges of the Supreme Court. Numerous royal decrees and ministerial decrees had been adopted to regulate various aspects of the modernization of the administration of justice. Thus the fees of judges and magistrates had been set above the average remuneration of the most senior civil servants; provisions had been established regarding the minimum time spent by a judge in a particular court so as to avoid a too rapid turnover of judges in courts located in less congenial or remote areas; and precise instructions had been given by the General Council of the Judiciary on the transfer of court documents by a departing judge to his successor. In Spain, judges were independent and their transfer was a matter of their own free will.

30. The self-governing General Council of the Judiciary used its disciplinary powers mainly through measures against judges who had not fulfilled their duties. All courts and tribunals were frequently visited by members of the judicial inspection service. In cases where politicians in some Autonomous Communities had lodged complaints about acts of the judiciary, those complaints had been submitted to the General Council, which had decided on the grounds for the complaints and the penalty to be imposed, if any.

31. In Spain as in other countries, there was a special "Accounts Court", a body which examined the accounts of public agencies. There had been lengthy discussions as to whether or not that was a special court until 1988, when a Supreme Court ruling had established that its activities fell within the purview of the ordinary courts and that its decisions could therefore be appealed against before the Supreme Court.

32. Mr. Cooray took the Chair.

33. Mr. WAKO commended the Spanish delegation for the progress made since its previous report in the area of the administration of justice, and particularly the increase in the number of courts, the reorganization of the judicial system and the release of additional funds to carry out modernization in that area and provide adequate legal assistance. On the question of the need to avoid undue delay in criminal hearings, he wondered how criminal procedures had been simplified since the second report, particularly in the light of the provisions of the Covenant.

34. In connection with the rule that an alleged terrorist should not, immediately after being arrested, have access to the lawyer of his choice on the grounds that it could be dangerous if the lawyer acted in collusion with a terrorist gang, he pointed out that under the Declaration on the Independence of the Legal Profession recently adopted by the United Nations Congress on the Prevention of Crime and the Treatment of Offenders in Havana, a lawyer had the right not to be identified with his clients or their cause. Thus, unless a lawyer had been proven to belong to a terrorist organization, he could not be rejected as counsel to a terrorist on the ground that he might be in sympathy with his client. With regard to article 14 (3) (b) and the Committee's comments thereon, he wondered how the principle of confidentiality of communication between a lawyer and his client was respected in Spain.

35. With reference to article 14 (2), he stressed that guilt could not be presumed until proven beyond reasonable doubt and that any doubt whatsoever must be construed in favour of the accused person. In that respect, he would welcome further explanations regarding the statement in paragraph 119 of the report, namely, that the presumption of innocence could be overturned by a minimum amount of evidence.

36. Article 14 (3) (d) of the Covenant established an individual's right to be tried in his presence, and while the article itself did not recognize any exception to that right, the Committee in its comments had stated that a person could be tried in absentia only in very exceptional circumstances and for justified reasons. Paragraph 109 of the report referred to a provision for holding a trial in the absence of a person charged with a minor offence, qualified as being punishable by imprisonment for not more than one year. His interpretation of a minor offence would be one subject to a fine rather than a custodial sentence. He therefore wondered whether Spain considered imprisonment for not more than one year to be an exceptional circumstance warranting a departure from the right of the accused to be tried in his presence.

37. Turning to paragraph 121 of the report, which related to article 14 (7) of the Covenant, he drew particular attention to the phrase "as the sole exception". Under common-law systems, the appellant court could, for various reasons, order a retrial of a case by the trial court, and, where there was no final decision by a court on the guilt or otherwise of the accused, such an order would not infringe article 14 (7) of the Covenant. Was the information given in paragraph 121 consistent with that outline of procedure under common-law systems? If it was not, the Spanish system might infringe article 14 (7) of the Covenant.

38. Article 14 (6) of the Covenant, referred to in paragraph 120 of the report, provided for a procedure for pardon on retrial in cases where newly-discovered facts subsequently caused a conviction to be reversed. It was not clear from paragraph 120 what procedures were followed in Spain or whether the appeal court review constituted a review under article 14 (5) of the Convenant. He would welcome clarification on that matter.

39. Mr. PRADO VALLEJO endorsed the questions asked by Mr. Wako. He, too, felt that the provision, referred to in paragraph 109, that the accused might be convicted in absentia was in conflict with article 14 (3) (d) of the Covenant.

40. Mr. MYULLERSON associated himself with the questions and comments of Mr. Wako and Mr. Prado Vallejo concerning trials in absentia and asked to what extent that procedure was used. Referring to paragraph 116 of the report, he expressed concern at the use of the phrase "entirely and absolutely disregarded", since it was possible that the procedure laid down by law might not have been respected, but at the same time it might not have been entirely and absolutely disregarded. He therefore wondered how the courts interpreted that concept under article 238 of the new Judiciary Organization Act.

41. The CHAIRMAN, referring to the statement in paragraph 100 of the report that the Judiciary Organization Act had replaced the previous Act of 1870, reminded the Committee that in 1985, in reply to a question which he himself had asked, the Spanish delegation had stated that the General Council of the Judiciary was responsible for the appointment, dismissal, disciplinary control and removal of judges, and was composed of judges - who formed the majority, lawyers and a number of politicians appointed by Parliament. Given that the General Council of the Judiciary, as stated in paragraph 101 of the report, was the governing body which ensures the institutional independence of judges, he wondered whether there were still a number of politicians on the Council and, if so, how the membership of politicians in such a body could be deemed consonant with the independence of the judiciary.

42. Mr. BORREGO BORREGO (Spain), replying to the various questions raised, said that the progress mentioned by Mr. Wako was still continuing largely because of budgetary and manpower requirements. As a lawyer, he had never heard of lawyers being in collusion with terrorists. That had not been his meaning, and he preferred to keep to the expression used by Mrs. Higgins, "sympathy of ideals". In any event, the measure only related to cases of terrorism. A lawyer was ex officio required to facilitate a proper and impartial examination of a case, and it should be borne in mind that if a lawyer committed any offence he was liable to prosecution. The legal profession in Spain in fact enjoyed a high reputation and the President of the Spanish Bar Association was well known throughout the world for his defence of the profession.

43. With regard to Mr. Wako's question on judicial procedures, it should first of all be made clear that, in Spain in accordance with international norms, the same judge did not first examine and then give decisions; those two functions were performed by different judges in order to ensure the maximum impartiality of the judiciary. As far as existing procedures were concerned, it was very difficult, particularly in criminal cases, to ensure both speedy justice and, at the same time, observance of guarantees. For less serious offences, involving sentences of less than six years' imprisonment, there had been a shorter procedure, but as there had not been strict observance of all the criminal safeguards, the procedure had been abandoned because the Constitutional Court required above all that in criminal cases there should be absolute observance of jurisdictional guarantees.

44. The right of presumption of innocence was a basic constitutional right in Spain, and proof that an offence had been committed under the Penal Code was essential. It was always completely respected, as borne out by a recent case concerning individuals extradited from France as suspected terrorists who had been released by the Spanish courts on the presumption of innocence principle.

45. Trials in absentia, were, in his experience, very infrequent and might possibly take place in cases involving traffic accidents when injury had occurred and the accused failed to appear in court. It was considered very important that the accused should be present at his trial with a lawyer, and that key witnesses both for the defence and for the prosecution should also appear in order to ensure that the trial was a fair one. Statistics would be provided on the relevant provision in Spain's next periodic report.

46. The remedy of review as referred to in paragraph 121 of the report was a special procedure involving a court consisting of magistrates from various courts, acting as a supreme court, in cases where fresh facts came to light since the passing of the original sentence. Such facts might be in the form of a missing person or a missing document.

47. The expression used in article 238 of the Judiciary Organization Act, referred to in paragraph 116, was disjunctive rather than copulative, or a legal reiteration. The Spanish Constitutional Court was very strict in its observance of the various guarantees to ensure that "defencelessness" did not occur. Failure to notify was one example of "defencelessness", which might occur in administrative matters, for example. The interpretation of that provision by the Constitutional Court was quite rigid.

48. The Chairman had asked a question about, the General Council of the Judiciary. That Council did not consist of politicians but was elected from among magistrates, lawyers and jurists of recognized competence and with over 15 years' professional experience. In Spain as in many other countries, the fact that lawyers sometimes occupied judicial posts, did not mean that they were political appointees.

IX. Freedom of movement and expulsion of aliens (articles 12 and 13)

"Please clarify whether, in view of the finding of unconstitutionality by the Constitutional Court of certain articles of Act No. 7/1985 of 1 July 1985, an expulsion order is automatically suspended when an appeal through amparo or other procedures for the suspension of administrative decisions is lodged with a judge by the concerned individual. (See para. 90 of the report.)"

49. Mr. BORREGO BORREGO (Spain), said in reply that there was no automatic suspension of an expulsion order. The judge examined the request and, if he felt that there were important factors which were difficult to redress, he would agree to the expulsion. It was therefore up to the judge himself to decide. Practically speaking, there was a high percentage of suspensions of expulsion orders.

50. Mr. Lallah resumed the Chair.

51. Mr. POCAR, addressing the subject of the limitation of the rights and freedoms of aliens in Spain, as adumbrated in paragraph 86 of the third report and in paragraph 20 of the addendum (CCPR/C/58/Add.3) in connection with State security matters, said that when Spain's second periodic report had been considered, he had observed, during the Committee's discussion of a bill then before Parliament, that the rules regarding the restriction of free movement by aliens was not fully consistent with article 12 (3) of the Covenant in that they were not necessarily provided for by law or essential in order to protect national security. He had found the same problem in Organization Act No. 7/85,

which had been passed after the Committee's examination of the bill. The Spanish representative had undertaken to convey the Committee's concerns to the Spanish Parliament, but despite the Government's efforts the situation remained the same.

52. Again referring to paragraph 86 of the third report, and the discretionary powers granted to the Minister of the Interior, he queried the purpose of the remedy under articles 34 and 35 of Organization Act No. 7/1985, and wondered whether it concerned the merits of any decision or its conformity with the law. He requested further information on the imposition of restrictions on aliens since 1985.

53. Mr. ANDO also drew attention to paragraph 20 of the addendum (CCPR/C/58/Add.3), and asked whether the Spanish delegation could elaborate on subparagraphs (b) and (c) and give examples of their application.

54. Mr. WENNERGREN, referring in particular to article 12 (2) and (3) of the Covenant, and paragraph 84 of the report concerning the right of Spaniards freely to enter and leave Spain under the terms laid down by law, asked what terms they were and whether they concerned the issuing of passports and visas, which might be used as restrictions on the right to leave the country.

55. Mr. BORREGO BORREGO (Spain) said that the Aliens Act was being enforced, albeit with some flexibility. In reply to Mr. Pocar he said that the Act was discretionary but could not be arbitrary. The courts could consider its discretionary nature, and the action taken must be neither unreasonable nor disproportionate. The question of aliens was a controversial one in Europe, where there had been disturbances involving aliens; such disturbances should not be tolerated. The Spanish law on the subject was currently before the Constitutional Court for a decision, on which further information would be given in a subsequent report.

56. In reply to the questions asked by Mr. Wennergren, he said that all Spaniards were entirely free to enter or leave the country; they required no passports in order to do so. No one could be denied a passport, however, except for criminal reasons. Passports had been issued to relatives of Spanish citizens coming from abroad. As citizens of a country belonging to the European Community, Spaniards could travel freely within the Community simply with an identity card. All travel restrictions for Spaniards on political grounds had been abolished as inadmissible in a democratic society.

X. Right to privacy (article 17)

"With reference to paragraph 133 of the report, please clarify whether the possibility of drafting legislation relating to data processing is being actively pursued by the Government."

57. Mr. BORREGO BORREGO (Spain) said that article 18 (4) of the Spanish Constitution stipulated that the law must limit the use of data processing in order to guarantee the honour and personal and family privacy of citizens, and the full exercise of their rights. Spain had ratified the European Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data, article 4 of which required the promulgation of legislation on the subject. Considerable progress had been made on a draft Organization Act prepared by the Ministry of Justice and the civil service; it would be

circulated to interested associations or organizations. The bill mainly concerned persons responsible for keeping personal data files and persons subject to data processing. It was designed to regulate the registration and use of personal data and to establish penalties for any offences. It was intended to be as comprehensive as possible in order to avoid infringement of the right to privacy. Other legal measures taken for the protection of privacy included: Organization Act No. 589 relating to censuses; a law of 1988 adopted in conformity with guidelines by the European Community; relevant provisions of a law on the civil service; the Protection of Information Act (No. 1289) relating to public statisticians and data protection in financial matters. A specific bill on data processing was currently under consideration.

58. Mr. DIMITRIJEVIC commended the third periodic report of Spain and the answers given to members' questions. He wished to ask a question relating to article 18 of the Covenant, which was not mentioned in the list of issues. He would welcome further information on paragraphs 139 and 140 of the report concerning conscientious objection, which was of considerable interest to the Committee and was under consideration in many countries.

59. He understood that soldiers who wished to become conscientious objectors after beginning their military service were not permitted to do so, but alternative civilian service was allowed under article 30 of the Constitution for civilians due for military service who were objectors on the grounds of belief. He asked what procedure existed for determining whether such belief was genuine or whether the person concerned was merely trying to avoid military service. He further asked whether the duration of alternative service was the same as that of military service. He understood that problems had arisen in other countries, where it had been claimed that the imposition of a longer period of alternative service represented discrimination on grounds of belief.

60. Mr. PRADO VALLEJO said he understood that religious freedom was guaranteed under the Spanish Constitution, but from paragraph 135 of the report it appeared that the various churches, faiths and religious communities must be entered in the public register established for the purpose within the Ministry of Justice. He asked whether any such bodies had been refused entry in the register and, if so, for what reasons.

61. On the question of conscientious objection, he noted from paragraph 139 of the report that under the former provisions of the Penal Code and Organization Act No. 8/1984, in conjunction with the Code of Military Justice, which had now been amended, a sentence of six months' to six years' imprisonment could be imposed on any person absent without due cause for over three consecutive days from the place where he was required to perform alternative social service. A sentence of up to six years for such an offence appeared to have been grossly excessive.

62. Mr. WENNERGREN said that although conscientious objection was not specifically mentioned under article 18 of the Covenant, when a country had recognized the right to conscientious objection, it appeared incompatible with that article to compel a person who had begun military service to continue that service if his conscience no longer permitted him to have anything to do with weapons designed to kill other human beings. He should have the same

opportunity as persons who had not entered military service to perform alternative service. It was difficult to understand the objective grounds for such differentiation.

63. Ms. CHANET said that, in its general comment on article 17, the Committee had suggested that telephone-tapping should be prohibited. According to the jurisprudence of the European Court of Human Rights, telephone-tapping was permissible only according to the law and under strict legal supervision. According to paragraph 46 of the report, in the case of a person suspected of participating in any offence connected with the activities of armed gangs or terrorist groups, the judge could authorize the accused person's communications to be intercepted when there was reason to believe that an important fact relating to the case could be disclosed or proved by that means, and if the matter was urgent, such permission could be granted by the Ministry of the Interior. The paragraph went on to say that the court, which could withdraw or confirm such permission, must be informed within a maximum period of 72 hours. In such a case, the person's right to privacy would already have been violated even if the court refused to confirm permission for tapping. She asked whether it was intended to maintain such legislation or whether some more general legislation on telephone-tapping should not be enacted to protect the right to privacy.

64. She would welcome further explanation of the difference in application of the law on house searches as between the public at large and persons suspected of engaging in terrorist activities.

65. There had been a case in Spain in which a person had been sentenced to imprisonment for insulting the flag, which at first sight appeared to be a matter affecting the right to freedom of opinion. She asked on what legal basis the act had been considered an offence.

66. Mr. BORREGO BORREGO (Spain) said that the question of conscientious objection had not been included in the list of issues and he had no written information to hand. The matter was a controversial one, but in Spain, as in many other countries, the principle of conscientious objection was accepted. The length of alternative service was twice the length of military service. Once a person had started military service, he could not be treated as a conscientious objector. The matter was, however, under judicial review. There were two rights to be considered: on the one hand, the right of the State to have regular military forces available and, on the other, the right of a conscientious objector to his opinion.

67. The entry of the various churches, faiths and religious communities in the public register was an automatic procedure. There had been some cases in which the nature of the activities pursued by certain religious associations was not entirely clear, but all of them enjoyed equal protection of the law. Protection was also given, however, against pseudo-religious organizations which caused harm to children, but in principle there was complete freedom of religion.

68. As Ms. Chanet had indicated, the European Court of Human Rights had ruled that telephone-tapping could take place under legal supervision. The Spanish Constitution provided that the Minister of the Interior could authorize such action in urgent cases, but the decision to do so must be communicated to a court, together with the grounds on which it was taken, and the court must confirm or reject it within 72 hours.

69. Article 553 of the Criminal Prosecution Act provided that the police could on their own authority arrest a person found in flagrante delicto who had taken refuge in his home, which could be entered for the purpose. Persons suspected of terrorist activities could be arrested at any place of refuge. The Act provided that the case should be brought before a judge, with full details of the offence and all relevant facts, for decision. Homes were sometimes searched in the presence of the judge, who directed the operation. Such cases had involved major drug offences. There were other cases in which the judge was merely informed of the facts and took his own decision as to whether he wished to direct the search of the premises concerned.

70. He was not certain about the legal provision governing insults to the flag, but he would examine the matter and endeavour to discover the circumstances in which the person concerned had been charged. He was personally unaware of the incident.

The meeting rose at 12.45 p.m.

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Fortieth session

SUMMARY RECORD OF THE 1021st MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 30 October 1990, at 3 p.m.

Chairman: Mr. LALLAH

CONTENTS

Consideration of reports submitted by States parties under article 40 of the Covenant (continued)

Spain (continued)

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The meeting was called to order at 3.10 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (agenda item 4) (continued)

Third periodic report of Spain (CCPR/C/58/Add.1 and Add.3) (continued)

1. The CHAIRMAN invited the Spanish delegation to reply to the questions asked in section XI of the list of issues.

XI. Freedom of expression, prohibition of propaganda for war and advocacy of national, racial or religious hatred (articles 19 and 20)

"(a) How is the right to seek information envisaged in article 19 (2) of the Covenant guaranteed?

(b) Is there legislation or, if not, is legislation being considered to regulate professional secrecy as provided for under article 20 (1) (d) of the Constitution?

(c) Are any legislative measures being considered to give effect to article 20 of the Covenant and, if not, why not?"

2. Mr. BORREGO BORREGO (Spain) said that he would deal with all the questions relating to article 20 of the Spanish Constitution in one answer. The article recognized and protected the right to freedom of the press, which covered the right freely to express and disseminate thoughts, ideas and opinions by word, in writing or by any other means, and freely to communicate or receive truthful information by any means of dissemination whatsoever. The article also stated that legislation should regulate the right to invoke the clause of conscience and the right of professional secrecy in the exercise of those freedoms. Those were constitutional rights enjoying special protection. All journalists agreed that no legislation was the best legislation where information was concerned. The Government and Parliament were also of that opinion, which explained why to date there was no legislation on the press or the media, properly speaking. Article 20 of the Constitution could be directly invoked before the Spanish courts and was immediately enforceable. The freedom of the press and the freedom to set up press enterprises were limited only by the provisions of the Penal Code and a law on the protection of honour. The Constitutional Court had ruled several times that the right to freedom of expression and the right to information overrode the right to honour. In any event, Parliament had agreed by a majority vote to the introduction of a bill relating to article 20 of the Constitution, probably before the end of the year.

3. Mr. DIMITRIJEVIC said that, as everybody knew, one of the threats to freedom of expression lay in how the restrictions on the exercise of that freedom were interpreted in cases where "respect of the rights or reputations of others" (Covenant, art. 19 (3) (a)) was involved. He had noted that Organization Act No. 1/1982 in particular dealt with the protection of the reputations of others. Some national and international non-governmental organizations had complained of a tendency in Spain to give some people excessive protection against insults or infringements of their privacy, particularly those highest in the social hierarchy. However, a contrary

tendency had recently appeared of exposing political personalities to harsher criticism than that directed at people who abstained from all public activity. He understood that some journalists had been sentenced to terms of up to six years' imprisonment in connection with the exercise of freedom of expression. He would like to know whether in Spain those sentences had been perceived as a restriction on such freedom and whether it was true that standards were applied more flexibly when the people concerned were in public life.

4. Mr. WENNERGREN said he would like to know more about the right to seek information. Many countries had adopted information legislation allowing a private individual to obtain from the national authorities information in their possession. Did such legislation exist in Spain and how did matters stand in that regard?

5. Mr. ANDO welcomed the opening up of freedom of expression in Spain, since freedom to criticize the Government was essential for the health of a democracy. He wished to ask the Spanish delegation three questions. First, article 20 (3) of the Constitution provided that the law should regulate the organization and parliamentary control of the media dependent on the State or on any public agency and should guarantee access to such media by significant social and political groups, respecting the pluralism of society and of the various languages of Spain. He asked what exactly was meant by the term "significant" and wondered whether the exercise of that freedom was reserved for certain groups.

6. Secondly, with regard to the Private Television Act (No. 10/1988), he understood that Spain was moving from a State monopoly situation to a process of opening television up to the private sector. He noted that, according to paragraph 146 of the report (CCPR/C/58/Add.1), it had been decided to grant three concessions by means of the appropriate public competition for a period of 10 years, renewable for similar periods. He wished to know what the procedure had been: for example, why the number of concessions had been limited to three, given the size of the country; whether the public competition had been subject to any conditions and, if so, what conditions; and by whom and by what criteria the granting of concessions was decided. Also, paragraph 147 of the report stated that the Ministry of Transport, Tourism and Communications was responsible for investigating and imposing penalties for minor infringements of the law, while the Council of Ministers was responsible for serious infringements. Who decided whether an infringement was minor or serious and was there a possibility of appealing against such a decision before the courts?

7. Thirdly, in connection with the political use of private television channels during election campaigns, he asked whether the principle was to try to ensure the political neutrality of the channels and who was responsible for ensuring such neutrality. Lastly, what authority was responsible for preventing abuse and were decisions on such matters also in the hands of the administrative authorities alone or could they be reviewed by the courts?

8. Mr. BORREGO BORREGO (Spain) confirmed that Spain had a law on the protection of honour, which was resorted to mostly by members of the theatrical profession and people who featured in the sensational, or "romantic", papers, not by political personalities. The law had in fact been

applied in some political cases, but politicians generally agreed that the law should be amended to make serious slanders on political personalities no longer liable to prison sentences but to fines, as in other countries. The Spanish courts observed the criteria established by the Constitutional Court for the exercise of the right to information, which was the corner-stone of any democratic society.

9. With regard to the right to seek information, the Spanish Administration was required to make available any information in its possession. That rule was limited only by an Official Secrets Act, as in most other countries.

10. Referring to article 20 (3) of the Constitution, he said that no press organ was in State ownership. All such organs were in private hands, as was radio, except for one national channel. There were already several foreign-owned private television channels and one private Spanish channel. The number of concessions had been limited to prevent groups or individuals gaining control of those media. No holding in a private television channel, whether by individuals or companies, could exceed 25 per cent. The restriction to three concessions was due not only to technical considerations, but also to the multiplicity of autonomous regions, which each had the right to set up its own official television channel. The impartiality of the information put out by a television channel belonging to an autonomous region or the State was guaranteed by the channels' boards of directors, which were made up of representatives of the various political parties and kept a close watch on the political neutrality of their output.

11. The channels' political neutrality during election campaigns was protected and any violation constituted an electoral offence. He assured the Committee that in Spain everything possible was done to guarantee their impartiality and neutrality. Lastly, while administrative penalties were the responsibility of the Ministry of Transport, Tourism and Communications, such penalties were subject to appeal before the courts.

12. Mrs. HIGGINS, raising a point relating to article 22 of the Covenant, wished to know the status of the Guardia Civil in Spain. Her understanding was that it was part of the armed forces and that its members were thereby denied the right to freedom of association under the Constitution. It seemed that some members of the Guardia Civil had been sentenced to comparatively heavy terms of imprisonment for having tried to form a trade union. She would welcome clarification on the matter.

13. Mr. BORREGO BORREGO (Spain) said that the status of the Guardia Civil was a very controversial question. In legal terms it was exceptional in that it was a military institution carrying out civilian functions. Since the advent of democracy the authorities had received several requests that the Guardia Civil should become a truly civilian institution, as its name implied.

14. Historically, the Guardia Civil had been - to use the classic terminology - a strategic instrument of Western defence. It offered several advantages, notably the fact that, as it existed throughout the country, it ensured proper protection in times of conflict. Times changed, and the arguments which had justified its existence were becoming less valid in the eyes of many Spaniards; it none the less remained a military force, whose members were not permitted to join or form a trade union. That being the

case, the small group of civil guards - a very small minority - who had attempted to do so had received sentences which however, none of them had served. The problem of the status of the Guardia Civil had still not been resolved. It was no longer a strictly Spanish issue and the solution would have to have a European dimension.

15. The CHAIRMAN invited the Spanish delegation to reply to the request in section XII of the list of issues.

XII. Protection of children (article 24)

"Please provide information regarding the law and practice relating to the employment of minors."

16. Mr. BORREGO BORREGO (Spain) said that the age of legal majority in Spain had been set at 18, but it was 16 for employment purposes. Some forms of work were, however, forbidden for persons below the age of 18 (night work, dangerous occupations, work in unhealthy conditions, etc.), in accordance with various International Labour Organisation conventions ratified by Spain. There was national legislation forbidding the employment of minors in occupations liable to interfere with their general education. On the principle that it was better not to apply the Penal Code to administrative offences, the Spanish authorities had decided to strengthen the Administrative Code for some offences of that kind and to delete them from the Penal Code.

17. Lastly, the provisions of the Civil Code relating to adoption had been amended. The new legislation stipulated that a child who had been completely abandoned was automatically placed with a public body, usually the territorial authority closest to the place where the child had been found.

18. The CHAIRMAN invited the Spanish delegation to reply to the questions raised in section XIII of the list of issues.

XIII. Rights of persons belonging to minorities (article 27)

"Please comment on the accomplishments to date of the relevant Autonomous Communities in their efforts to integrate the gypsy minority and about any continuing difficulties being faced in that regard."

19. Mr. BORREGO BORREGO (Spain) said that with regard to the gypsy minority Spain could not be accused of racism, given its long history of harmonious coexistence with various ethnic groups. The gypsies were well integrated into Spanish society and their integration posed no particular problem. The Government had made great efforts to improve their living conditions, although that had not been easy owing to their nomadic way of life. The Ministry for Social Affairs had had housing built for them and settled some of them there. The Ministry had also been instrumental in setting up an interministerial group, comprising representatives of the Ministries of the Interior, Labour, Social Welfare, Culture, Health and Consumer Affairs, Public Works, Education and Science, and Town Planning, with the task of encouraging the adoption of measures to improve the integration and development of the gypsy minority. The central Government had co-operated with the Autonomous Communities and non-governmental organizations for that purpose by providing technical and financial assistance amounting to 2.7 million pesetas in 1990. Some

Autonomous Communities had also adopted social and other legislation which made special provision for gypsies, while the national budget had included 500 million pesetas for the implementation of a development plan for the gypsies.

20. Mr. NDIAYE said that although Spain had made very substantial progress in the protection of human rights and fundamental freedoms, there remained some difficulties relating to articles 5-14 of the Covenant. They included not only the phenomenon of terrorism, mentioned by other members of the Committee, but also the question of minorities, which did not seem to have been handled in a manner entirely satisfactory to all of them. Spain recognized only one ethnic minority - the gypsies. The others were linguistic minorities, whose autonomy and cultural identity had been recognized by the central Government. However, one of them, the Basque minority, had for many years been waging a struggle to achieve independence, and he would like to know whether the existing structure of the Spanish State was considered absolute or whether any changes might be envisaged to accede to the claims of a minority, given that the Autonomous Communities had not been granted very much power, or at least not compared with that retained by the Spanish State.

21. Mr. ANDO, referring to paragraph 197 of the report (CCPR/C/58/Add.1), noted that the use of the various languages spoken in Spain apart from Spanish had been strengthened and that they were used in education, administration, literature, the theatre and the cinema, and on television and radio. He asked whether such languages could also be used in court cases, for example before a higher national court.

22. Mr. WAKO reminded the Committee that during the consideration of the previous periodic report the Spanish delegation had said that there was a gypsy Member of Parliament. He asked whether that was still the case, whether there were others and, if not, why not.

23. There were gypsies in various regions of the country, including some of the autonomous regions. He asked whether measures had been taken to encourage the use of their language and whether it was used in the same way as the other languages spoken in Spain.

24. With regard to the measures taken to promote the integration of gypsies, he would like to know whether such integration did not result in assimilation in which the gypsies were in danger of losing their identity. The problem was complex, because although the integration of minorities into society must be ensured, every effort must also be made to safeguard the elements which were distinctly theirs and which constituted their heritage.

25. Mr. MYULLERSON asked whether the Basques constituted a linguistic minority or a separate people, and wondered what they themselves felt about their "ethnicity". The Basque problem was a serious one for Spain owing to the terrorism it engendered. It was an issue which should be considered in all its aspects.

26. The report mentioned the efforts made to integrate the gypsies into Spanish society, but it remained uncertain whether they themselves wanted such integration since national minorities often refused to be integrated for fear of losing their identity. He wondered whether under the integration measures care had been taken to preserve gypsy culture.

27. Mr. BORREGO BORREGO (Spain), replying first to the questions about ethnic minorities, particularly the possibility of changing State structures with a view to satisfying claims from regions such as the Basque country, referred the Committee to article 2 of the Constitution, which read: "The Constitution is based on the indissoluble unity of the Spanish nation, the common and indivisible country of all Spaniards." The countries of which the nation was composed, therefore, like the Basque country, Catalonia, Galicia and the other regions, formed an integral part of Spain.

28. Once a people was able to express its views through free and democratic elections, it was difficult to understand how issues of nationalism could arise. On 28 October free and autonomous elections had been held in the Basque country and the PNUE, a moderate Basque nationalist party which had already been governing the region for four years together with the socialist party (PSOE), had won. The extremist nationalist party, which publicly supported ETA, had received the same number of votes as at previous elections and thus did not constitute a majority party. However, it had decided to participate in the political machinery of the Spanish State and had sent elected members to the Congress and the Senate. In the terrorist organization itself, it seemed that there had been disputes between those who advocated going down the peaceful road of elections and those who still believed that only through armed struggle would they achieve their aims. In a democratic system there was no reason to use violence. Nationalism was justified if it expressed itself by peaceful means, as was the case in the other regions. If a party standing for self-determination was voted into power by a majority of the Basque electors one day, that would be the time to consider the consequences of such a vote. For the moment, Euskadi was fully integrated with Spain.

29. On the question of languages, the use of the official languages in each Autonomous Community posed no problem. Two languages, Spanish and the local language, were the official languages of the Autonomous Communities. The official gazette of each Community was published in both languages. Both were widely used in daily life. The local language was used in the courts if it was understood by all those present; if not, Spanish was spoken as a matter of courtesy and that presented no problem. The local languages were generally used in regional television programmes, thus helping to keep them alive. A special effort was made to ensure that children's programmes, such as cartoons, used the local language. As to the use of the official languages of the Autonomous Communities before the higher courts, the issue had arisen during a court case when a well-known Catalan activist had wished to address the court in Catalan. His written statement had been accepted, but subsequently he had been reminded that the State language was Spanish. He had refused to speak in Spanish and had taken his case to the European Court of Justice in Strasbourg, where his complaint had been declared inadmissible and rejected on the grounds that it had no basis in law, since Spanish was the only language of the Spanish State.

30. Turning to the question of the gypsy minority, he confirmed that there had been a gypsy member of the Cortes, who was currently a member of the European Parliament. With regard to the language, it could not be said that there was a gypsy language in Spain, but only some gypsy words in Spanish slang.

31. It was regrettable that the integration of a minority led to the loss of its traditional values, but that was a general phenomenon in a world where everything was tending to become standardized. The gypsy minority's principal livelihood had been trading in horses and other animals, but technical progress had deprived them of that. What they currently wanted was to be able to adapt their way of life to that of the society in which they lived. Itinerant trade in a variety of articles was one of their favourite occupations, since it enabled them to maintain their nomadic way of life. His Government made every possible effort to respect gypsy customs and culture.

32. The CHAIRMAN invited the members of the Committee to make general observations on the third periodic report of Spain and on the replies by the Spanish delegation to the questions which had been asked.

33. Ms. CHANET said that she was still concerned about a number of problems, the first being the suspension of terrorists' rights and the fact that circumstances had apparently given rise to permanent emergency legislation. In her view, that situation was not consistent with the Covenant.

34. Secondly, she was concerned at the torture and ill-treatment to which prisoners were subjected. The People's Advocate had spoken about that question in great detail in his report and it was unfortunate that the Spanish delegation had not said how seriously the report should be taken or what the Government intended to do to implement it in the way of guaranteeing effective remedies for victims, supervising the prison authorities and police forces involved, training prison and police officers, and above all punishing the perpetrators of abuses.

35. Her third cause for concern was the period of pre-trial detention, which could amount to two years. Such a period was, in her view, excessive and inconsistent with article 9 of the Covenant. The linkage between the pre-trial detention period and the severity of the punishment called into question the presumption of innocence, but an even greater problem arose over the linkage between detention and sentence, since that constituted real prejudgement. In her opinion, pre-trial detention could be justified only for the purposes of the preliminary investigation.

36. She was also concerned that there were still lingering traces of the crime of opinion in the offence of insulting the flag, but she believed that that was a leftover from the past and that such cases seldom occurred in practice, given that Mr. Borrego Borrego had not known that such an offence existed.

37. She had been interested to learn that discussions were currently taking place in Spain regarding article 12, on freedom of movement and the expulsion of aliens.

38. Mr. FODOR thanked the Spanish delegation for its co-operation, which had resulted in a fruitful dialogue with the Committee. The third periodic report, prepared in accordance with the Committee's guidelines, was extremely informative, although it might have been desirable to mention the problems and factors that made implementation of the Covenant more difficult. Quite obviously the main problem faced by Spain was terrorism, but the rights guaranteed in the Covenant should be fully protected notwithstanding the gravity of that phenomenon.

39. The administration of justice also seemed to be posing some problems. Although a radical reform of the judicial system was necessary in order to eliminate backlogs, care should be taken to ensure that doubling the number of judges and simplifying court procedures did not have any negative impact on the quality of justice.

40. Over a mere 15 years, Spain had come a long way along the road to democracy. Some areas of concern remained, however. Thus, although introducing the offence of torture into the Penal Code might be an important step in improving the situation regarding the treatment of detainees, further measures must be taken, particularly with regard to the the training of the security forces and punishments for those guilty of violations. He also considered that the number of offences which could carry the death penalty in time of war was too high and the time-limit for pre-trial detention was still excessive.

41. The continuous but radical reform of the political institutions and of the whole legal system, duly reflected in the State party's reports, was evidence of the democratic changes which had taken place in Spain and which could serve as an example for other countries, particularly in Central and Eastern Europe. He was confident that the Spanish Government's firm commitment would result in the establishment of all the democratic values and the elimination of the remaining shortcomings in the implementation of the Covenant.

42. Mr. MYULLERSON thanked the Spanish delegation for replying so fully to the Committee's many questions, thus creating a fruitful dialogue, which, he was bound to emphasize, was not always achieved.

43. The report, which was already very comprehensive, could have been even more so if the authors had provided some information on the difficulties encountered in implementing the Covenant. In common with other members of the Committee, Mr. Myullerson continued to believe that article 55 (2) of the Constitution did not refer to a state of emergency and that the very limited derogations to the rights enshrined in the Covenant, permitted under article 4, did not apply to the situation envisaged in article 55 of the Constitution.

44. The implementation of the report of the People's Advocate, which had spoken of acts of torture and other forms of ill-treatment, was particularly important. Lastly, he considered that the linkage between the period of pre-trial detention and the seriousness of the suspected offence was unacceptable.

45. Mr. AGUILAR URBINA welcomed the constructive and very frank dialogue which had taken place with the Spanish delegation; it had provided an opportunity to observe at first hand the progress of democratic Spain.

46. In common with other members of the Committee, he still considered that the anti-terrorist law was tantamount to a kind of permanent state of emergency directed against specific individuals, which was not consistent with the Covenant. He was also concerned about the cases of torture and ill-treatment reported not only by non-governmental organizations but also by the People's Advocate. In his view, the problem stemmed largely from the fact that the Guardia Civil was a military body. Its status should therefore be changed.

47. The fact that an individual suspected of terrorist activities was defended by an officially-appointed lawyer and not by the counsel of his choice was scarcely consistent with article 14 (3) of the Covenant. The same was true of pre-trial detention, whose maximum duration of two years was excessive. Lastly, although the death penalty could be imposed only for military offences and only in time of war, the number of such offences was very high.

48. Mr. EL-SHAFEI again stressed the excellence of Spain's third periodic report, which had been prepared in accordance with the Committee's guidelines and submitted promptly. While it was gratifying that the Covenant had been incorporated into Spanish domestic law, it should be noted that some rights enshrined in the Covenant were not covered by the Constitution. However, the many amendments to current legislation to make it consistent with Spain's obligations under the European Convention on Human Rights and the Covenant were worthy of note.

49. He associated himself with other members of the Committee who had expressed concern at certain practices, particularly the period and conditions of pre-trial detention. However, he wished to stress that the transition from an autocratic régime to democracy could not be completely smooth and that in that regard Spain could serve as a model to other States whose populations did not yet enjoy the same degree of protection and democracy.

50. Mrs. HIGGINS shared the concern expressed by other members of the Committee, remarking that the very fact that people from such different legal, social and political systems were agreed on precisely the same points was in itself significant. Thus, everyone was agreed that the connection which was apparently being made between article 55 (2) of the Constitution and article 4 of the Covenant was, to say the least, arguable. Every member of the Committee also wanted an assurance that the proposals put forward by the People's Advocate in his report on ill-treatment during detention would be acted on by the Government.

51. The topics of concern mentioned were essentially the same as those which had arisen during the consideration of the first two periodic reports of Spain (linkage between the period of pre-trial detention and the seriousness of the suspected offence, ex officio lawyers appointed to defend persons suspected of terrorism, for example). That was a point which called for some thought.

52. Despite such reservations, the steady improvement in the human rights situation in Spain, particularly through the strengthening of the legal system and the judiciary, commanded respect and it could be confidently said that Spain was continuing to make progress on all fronts.

53. Mr. ANDO thanked the Spanish delegation for having replied so fully to the many questions it had been asked. He associated himself with the remarks by other members who had stressed the importance of such questions as the restrictions on the rights of persons suspected of terrorism, imposed under article 55 (2) of the Constitution, and the brutality to which detainees had been subjected. Other causes for concern were the urge for the speedy execution of justice, which threatened the possibility of a fair trial, the limitations on aliens' right of residence and restrictions (few in number) on press freedom. On the last point, it was to be hoped that the bill going through Parliament would contain provisions that were as liberal as possible.

54. Overall, he was pleased to note the tendency to eliminate existing human rights restrictions. The consolidation of democracy was a long process and Spain was an excellent example of a country which had been able to inherit the heavy burden of the previous régime and then move resolutely forward along the path of democracy.

55. Mr. WENNERGREN said that he was particularly pleased with the consideration of the third periodic report of Spain, which had given the Committee a better understanding of that country's legal system. Apart from the causes of concern mentioned by other members of the Committee, he wished to take up the treatment accorded to conscientious objectors in Spain. His own view was that conscientious objection came under article 18 of the Covenant and that the law dealing with the right of conscripts to conscientious objection was biased and discriminatory. He hoped that the Spanish delegation would draw the Government's attention to the matter.

56. Mr. POCAR associated himself with the other members of the Committee who had told the Spanish delegation of their great satisfaction at the dialogue which had taken place and at the remarkable progress achieved in Spain. He expressed agreement with the remarks made regarding the anti-terrorist law, the ill-treatment of prisoners and the period of pre-trial detention. He was also concerned at the possible consequences for the protection of the rights recognized under the Covenant resulting from the 1985 Act on the rights and freedoms of aliens in Spain. He had, however, been relieved to hear that the Constitutional Court had already declared some provisions of the Act unconstitutional and had undertaken to review several others.

57. Mr. DIMITRIJEVIC also praised the high quality of the third periodic report of Spain and the replies by the Spanish delegation to the Committee's questions. At the time of the consideration of the second periodic report, the Committee had already expressed the view that Spain could show the way to other countries engaged in the difficult process of democratization. Spain showed that the consolidation, or introduction, of democracy could be achieved fairly smoothly, although there were clearly still some obstacles.

58. Although that process required changes in the law, it perhaps required an equal number of changes in attitudes and ways of thinking. In the light of that, Spain should review police training, strengthen the trend towards the liberalization of information and seek to reconcile the effectiveness of the struggle against terrorism with protection for human rights. By contrast, Spain had passed the test of the emancipation of women, which was far from easy in traditional societies. The law on conscientious objection still remained a problem.

59. The consideration of the third periodic report of Spain had enabled the Committee to note the progress achieved in the introduction of full and complete democracy; he trusted that the efforts made by the Spanish Government to give supremacy to human rights would be crowned with success.

60. The CHAIRMAN invited the Spanish delegation to convey to its Government the Committee's gratitude for the excellent report which had been submitted and thanked it for the dialogue which it had initiated. The report revealed many very positive factors, particularly the Government's commitment to strengthen the machinery of justice. Nevertheless, the Committee felt that the causes for concern were the same as had been expressed during the

consideration of the second periodic report: the application of article 55 (2) of the Constitution in the struggle against terrorism, the linkage between the length of pre-trial detention and the severity of the sentence for a suspected offence, and the failure to implement the report of the People's Advocate. He hoped that the Spanish Government might take note of the fact that habeas corpus should be available throughout Spanish territory, not only before a Madrid court, and that the Guardia Civil should become a wholly civilian body.

61. The Committee awaited with interest the consideration of the fourth periodic report to be submitted by Spain in April 1994. It was confident that it would then see further progress in the consolidation of democracy.

62. Mr. BORREGO BORREGO (Spain) said that he had taken note of the Committee's concerns and observations, which he would duly convey to his Government. His delegation had been happy to be able to co-operate with the Committee, whose remarkable work could only advance the cause of human rights.

63. The CHAIRMAN announced that the Committee had thus completed the consideration of the third periodic report of Spain.

64. The members of the Spanish delegation withdrew.

The meeting rose at 5.20 p.m.